

Chapter 40.  
*District Courts Act 1963.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 40.

***District Courts Act 1963.***

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# INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

## ***District Courts Act 1963,***

Being an Act to provide for the establishment of District Courts and their jurisdiction and proceedings, and for related purposes.

### **PART I. – PRELIMINARY.**

#### **1. INTERPRETATION.**

<sup>1</sup>In this Act, unless the contrary intention appears—

“charge of an indictable offence” means a charge of an indictable offence as such and in order to a committal for trial for the offence;

“Clerk” means the Clerk of a District Court;

“Commissioner for Oaths” means a Commissioner for Oaths appointed under the *Oaths, Affirmations and Statutory Declarations Act 1962*;

“Complainant” includes informant;

“complaint” means a complaint other than a complaint for an offence, and includes an application and notice of set-off;

“correctional institution” means a correctional institution declared under the *Correctional Service Act 1995*;

“Court” means a District Court;

“decision” includes a committal for trial and an admission to bail, and a conviction, order, order of dismissal or other determination;

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<sup>1</sup> Section 1 amended by No. 32 of 1980, s1 and; Section 1 amended by No. 1 of 1981, s1; Section 1 (definition of “Magistrate Grade V”) repealed by No. 8 of 2000; Section 1 (definition of “Magistrate Grade IV”) repealed by No. 8 of 2000; Section 1 (definition of “Magistrate Grade III”) repealed by No. 8 of 2000; Section 1 (definition of “Principal Magistrate”) repealed by No. 8 of 2000.

**“defendant”** means a person against whom an information is laid or a complaint is made;

**“fine”** includes a pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable under a conviction;

**“hearing”** includes the examination of a person charged with an indictable offence;

**“information”** includes a complaint for an offence but not any other complaint and does not include a Traffic Infringement Summons;

**“legal representative”** means a person referred to in Section 59(1)(a), (d) or (e) or a person in respect of whom a certificate has been given under Paragraph (b) or (c) of that section;

**“Magistrate”** means a Magistrate appointed under the *Magisterial Service Act 1975* and includes a Deputy Chief Magistrate, a Principal Magistrate, a District Court Magistrate and a Reserve Magistrate;

**“order”** means an order made on a complaint;

**“police lock-up”** means a police lock-up appointed under the *Correctional Service Act 1995*;

**“police officer”** means any member of the Police Force;

**“Reserve Magistrate”** means a Reserve Magistrate appointed under Section 3;

**“simple offence”** means an offence punishable on summary conviction before a court by fine, imprisonment or otherwise;

**“Traffic Infringement Summons”** means a Traffic Infringement Summons issued under Section 34A of the *Motor Traffic Act 1950*.

**PART II. – MAGISTRATES, ETC.**

***Division 1.***

***Appointment of Magistrates.***

**1A. APPOINTMENT OF PRINCIPAL MAGISTRATES.**

<sup>2</sup>The Judicial and Legal Services Commission may, in accordance with this Division, appoint persons to be Principal Magistrates.

**1B. QUALIFICATIONS OF CITIZENS FOR APPOINTMENT AS PRINCIPAL MAGISTRATES.**

<sup>3</sup>A citizen is qualified for appointment as a Principal Magistrate if—

(a) he—

(i) is a graduate in law of a university in the country or of a university of another country the degree in law of which is recognized by the Judicial and Legal Services Commission as a sufficient academic qualification for appointment; and

(ii) has practised as a lawyer for not less than four years; or

(b) he—

(i) is a graduate in law of a university in the country or of a university of another country the degree in law of which is recognized by the Judicial and Legal Services Commission as a sufficient academic qualification for appointment; and

(ii) has not less than five years experience in the country as a Magistrate.

**1C. QUALIFICATIONS OF NON-CITIZENS FOR APPOINTMENT AS PRINCIPAL MAGISTRATES.**

<sup>4</sup>A non-citizen is qualified for appointment as a Principal Magistrate if he is or has been a lawyer who has practised as a lawyer—

(a) in the country; or

(b) in another country with a legal system that, in the opinion of the Judicial and Legal Services Commission is substantially similar to the legal system of Papua New Guinea; or

(c) in the country and in another country referred to in Paragraph (b),

for a period of not less than five years.

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<sup>2</sup> Section 1A Added by No. 32 of 1980, s4.

<sup>3</sup> Section 1B Added by No. 32 of 1980, s4.

<sup>4</sup> Section 1C Added by No. 32 of 1980, s4.

## 25. [REPEALED.]

## 3. RESERVE MAGISTRATES.

(1) Where in its opinion it is necessary in the interests of the effective and speedy administration of justice, the Judicial and Legal Services Commission may, by notice in the National Gazette, appoint an officer to be a Reserve Magistrate of a District Court.

(2) A Reserve Magistrate has and may exercise, in and for the area specified in his instrument of appointment, all the powers and functions of a Magistrate under this Act and any other law.

(3) A Reserve Magistrate—

- (a) is not, merely by virtue of his appointment under Subsection (1), a member of the Magisterial Service; and
- (b) is subject to direction by the Chief Magistrate in regard to practice and procedure relating to the exercise and conduct of his powers, functions and duties.

## 4. INDEPENDENCE OF MAGISTRATES.

Subject to the powers and authority of the National Court, a Magistrate is not subject to any direction in, or in relation to, the hearing and determination of a case before him.

*Division 2.**Jurisdiction of Magistrates.*

## 5. JURISDICTION OF MAGISTRATES.

Magistrates have and may exercise within and for their jurisdictions the several powers and authorities conferred on them by this or any other law.

## 6. JUDICIAL DECLARATION.

A Reserve Magistrate shall not exercise any of the functions of his office until he has made the Judicial Declaration.

## 7. AUTHENTICATION OF ACTS OF MAGISTRATE OR CLERK.

All summonses, warrants, convictions and orders (not being by law authorized to be made by word of mouth only) shall be under the hand of the Magistrate or Clerk issuing or making them.

<sup>5</sup>


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Section 2 repealed by No. 8 of 2000.

**8. WARRANT, ETC., ON SUNDAY.**

A Magistrate may receive an information and may grant or issue a warrant or summons on a Sunday as on any other day.

**9. PRESUMPTION OF JURISDICTION.**

An act done or purporting to have been done by or before a Magistrate shall be taken to have been done within his jurisdiction in the absence of proof to the contrary.

**10. EXECUTION OF WARRANT AND SERVICE OF SUMMONS.**

(1) A warrant issued by a Magistrate—

- (a) for compelling the appearance of a person; or
- (b) for apprehending a person charged with an offence; or
- (c) of commitment, search or execution,

may be executed in any part of the country and may be executed on a Sunday.

(2) A summons issued by a Magistrate or Clerk may be served in any part of the country.

(3) A warrant need not be returnable at a particular time but may remain in force until executed, and a warrant of execution or commitment may be executed from time to time until satisfaction of the warrant is obtained.

**11. WARRANTS OF EXECUTION AFTER APPEAL.**

After an appeal against a conviction or order has been decided against the appellant, a Magistrate may issue a warrant of execution or commitment for execution of the conviction or order as if no appeal had been brought.

**12. DEATH, ETC., OF MAGISTRATE DOES NOT AVOID SUMMONS, ETC.**

A warrant or summons issued by a Magistrate is not avoided by reason of the Magistrate dying or ceasing to hold office.

**13. ORDER IN LIEU OF MANDAMUS.**

(1) Where a Magistrate refuses to do an act relating to the duties of his office as a Magistrate, the party requiring the act to be done may apply to the National Court or a Judge, on affidavit of the facts, for an order calling on the Magistrate and the party to be affected by the act to show cause why the act should not be done, and if, after due service of the order, good cause is not shown against it, the National Court or Judge may make the order absolute, with or without payment of costs.

(2) A Magistrate, on being served with an order absolute under Subsection (1), shall obey the order and do the act required by it to be done.

## PART III. – DISTRICT COURTS.

### *Division 1.*

#### *Establishment of District Courts.*

#### **14. DISTRICT COURTS.**

The Judicial and Legal Services Commission may, by proclamation in the National Gazette—

- (a) establish a District Court for an area specified in the proclamation; and
- (b) abolish a District Court.

#### **15. TRANSFER OF PROCEEDINGS WHERE COURT ABOLISHED.**

Where the Judicial and Legal Services Commission issues a proclamation abolishing a District Court, it may, in the same or a subsequent proclamation, direct—

- (a) that the books and records of the Court be transferred to some other District Court named in the proclamation; and
- (b) that all proceedings pending in the first-mentioned Court at the date of its abolition shall be had and determined in the other District Court,

and that other Court has jurisdiction to make all orders and to do all things in relation to those proceedings that could have been made or done by the first-mentioned Court if it had not been abolished.

#### **16. CONSTITUTION OF COURT.**

(1) A Court may be constituted by one or more Magistrates.

(2) Where a Court is constituted of two or more Magistrates, the Magistrate senior by date of appointment shall be the Chairman of the Court.

(3)<sup>6</sup> [Repealed.]

#### **17. PLACES FOR HOLDING COURT.**

(1) The Judicial and Legal Services Commission may, by notice in the National Gazette, appoint places for holding Court.

(2) A Court shall not sit in a room or place other than a courthouse unless—

- (a) there is no courthouse within a convenient distance; and
- (b) as much notice of the time and place of sitting as is practicable is given to members of the public likely to desire to attend.

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<sup>6</sup> Section 16(3) repealed by No. 8 of 2000.

## 18. CLERKS OF COURT.

(1)<sup>7</sup> <sup>8</sup>There shall be such Clerks of Court as are necessary, who, subject to Subsection (2), shall be appointed under the *Public Services (Management) Act 1995*.

(2)<sup>9</sup> <sup>10</sup>The Judicial and Legal Services Commission may appoint an officer to be the Clerk and the *Public Services (Management) Act 1995* applies to the officer in his capacity as Clerk of the Court.

(3) The Clerk shall discharge the duties of his office at every place for which he is appointed.

## 19. CLERK TO KEEP REGISTERS, ETC.

The Clerk shall keep such registers and books and have and perform such duties and functions as are prescribed.

### *Division 2.*

#### *Jurisdiction of District Courts.*

## 20. JURISDICTION OF COURTS.

(1)<sup>11</sup> <sup>12</sup>Where, by law—

- (a) an offence is punishable on summary conviction or a person is made liable to a penalty or punishment or to pay a sum of money for an offence, act or omission and the offence, act or omission is not an indictable offence; or
- (b) subject to Subsection (1A), an indictable offence is punishable on summary conviction, being an offence specified in Schedule 2 to the *Criminal Code 1974*,

the matter may be heard and determined by a District Court in a summary manner under this Act.

(1A) Subject to Subsections (1B) and (1C), proceedings for an offence under Subsection (1)(b) shall be heard and determined by a District Court constituted by one or more Principal Magistrates.

(1B) The National Court has concurrent jurisdiction to hear and determine matters to which Subsection (1)(b) applies.

<sup>7</sup> Section 18(1) amended by the *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s6.

<sup>8</sup> Section 18(1) amended by the *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s6.

<sup>9</sup> Section 18(2) amended by the *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s6.

<sup>10</sup> Section 18(2) amended by the *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s6.

<sup>11</sup> Section 20(1) amended by No. 32 of 1980, s6; amended by No. 34 of 1983, s1.

<sup>12</sup> Section 20(1) amended by No. 32 of 1980, s6; amended by No. 34 of 1983, s1.

(1C) Where proceedings are brought in respect of two indictable offences of which—

- (a) one offence is an indictable offence to which Subsection (1)(b) applies; and
- (b) the other offence is an indictable offence to which Subsection (1)(b) does not apply,

both offences shall proceed on indictment to be heard and determined together by the National Court.

(1D) Where a person is charged before a court with an indictable offence to which Subsection (1C)(b) applies, and it appears that a period of time will elapse before the matter is heard and determined by the National Court, the court before which the accused person is brought shall—

- (a) by its warrant commit the person to a correctional institution, police lock-up or other place of security to be kept there safely until the time appointed for the hearing by the National Court; or
- (b) admit the person to bail in accordance with Division VI.2.

(2)<sup>13</sup> <sup>14</sup>Where, by law, jurisdiction is conferred on one or more Magistrates to hear and determine proceedings in respect of an offence or to do an act or to exercise a power, that jurisdiction may be exercised by a Court.

## 21. CIVIL JURISDICTION.

(1) Subject to this Act, in addition to any jurisdiction conferred by any other law, a Court has jurisdiction in all personal actions at law or in equity where the amount of the claim or the amount or value of the subject matter of the claim does not exceed—

- (a) where the Court consists of one or more Principal Magistrates.—K10,000.00; and
- (b) where the Court consists of one or more Magistrates.—K8,000.00.

(c - d)<sup>15</sup> [Repealed.]

(2) [Repealed.]

(3) Subsection (1) shall not be taken to limit the jurisdiction of Courts in cases where, by any law, money, irrespective of amount, may be recovered before a Court.

(4) A Court has no jurisdiction in the following cases:—

- (a) where the validity or effect of a devise or bequest or a limitation under a will or settlement, or under a document in the nature of a settlement, is in dispute;

<sup>13</sup> Section 20(2) amended by No. 33 of 1980, s1.

<sup>14</sup> Section 20(2) amended by No. 33 of 1980, s1.

<sup>15</sup> Section 20(2) amended by No. 33 of 1980, s1.

- (b) the infringement of trade names;
- (c) an action for or in the nature of slander of title;
- (d) an action for illegal arrest, false imprisonment or malicious prosecution;
- (e) for seduction or breach of promise to marry;
- (f) when the title to land is *bona fide* in dispute.

(5) Subject to this section, a Court has jurisdiction when—

- (a) the defendant, or one of two or more defendants, as the case may be, is usually resident, or carries on business; or
- (b) the cause of action wholly or partly arose; or
- (c) the defendant has given an engagement or written promise to pay a debt or sum at a specified place,

in the area for which the Court is constituted.

(6) A Court has jurisdiction under this section notwithstanding that the defendant is not within the country, if the defendant is within a State or a Territory of or under the authority of Australia.

(7) Subsection (6) applies whether the defendant has or has not ever been resident in or carried on business in the country.

(8) For the purposes of Subsections (6) and (7), “**defendant**” means, where there are more defendants than one, a defendant not within the country.

## 21A. RULES RELATING TO PRACTICE, ETC.

<sup>16</sup>Subject to the approval of the Judicial and Legal Services Commission the Chief Magistrate may make rules relating to practice and procedure in the civil jurisdiction.

## 22. GENERAL ANCILLARY JURISDICTION.

Subject to this Act, a Court as regards a cause of action for the time being within its jurisdiction, shall, in proceedings before it—

- (a) grant such relief, redress or remedy, or combination of remedies, whether absolute or conditional; and
- (b) give the same effect to every ground of defence or counterclaim, whether equitable or legal,

as ought to be granted or given in a similar case by the National Court and in as full and ample a manner.

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<sup>16</sup> Section 21A added by No. 33 of 1980, s2.

## **22A. DISSOLUTION OF CUSTOMARY MARRIAGE.**

<sup>17</sup>(1) A District Court shall, on application by a person married by custom, and on being satisfied that the marriage has been dissolved in accordance with custom, grant to him a certificate that the marriage has been so dissolved.

(2) A certificate under Subsection (1) is conclusive evidence that the marriage has been dissolved.

## **22B. MEDIATION IN CIVIL MATTERS.**

<sup>18</sup>(1) A Magistrate approved by the Judicial and Legal Services Commission for the purpose, or a person appointed by the District Court may mediate between the parties in a civil matter at any stage of or before the hearing with a view to the just and amicable settlement of the matter.

(2) A District Court may postpone or adjourn the hearing of a complaint in a civil matter where it considers that by doing so a just and amicable settlement will be or may be reached by the parties to the case.

(3) Where a settlement has been reached under this section, the District Court may embody it in its decision without further hearing.

## **22C. HEARING WHEN MEDIATION FAILS.**

<sup>19</sup>Where a Magistrate has acted as Mediator under Section 22B(1) but the attempt or mediation has failed, the Magistrate shall not, except at the request of the parties to the proceedings, hear or continue to hear the proceedings or determine the proceedings, and, in the absence of such a request, arrangements shall be made for the proceedings to be dealt with by another Magistrate.

## **22D. STATEMENTS, ETC., MADE IN COURSE OF MEDIATION.**

<sup>20</sup>Evidence of anything said or of an admission made in the course of an attempt at mediation under Section 22B is not admissible in any court in the country or in proceedings before any person authorized by a law in force in the country, or by consent of parties, to hear, receive and examine evidence.

## **23. PROCEEDINGS OF COURT IN CERTAIN CASES.**

Where—

- (a) a Court has concurrent jurisdiction with the National Court with respect to an offence; or
- (b) complaint is made to a Court under this Act with respect to a claim for debt or damages,

<sup>17</sup>Section 22A inserted by No. 8 of 2000 s. 6.

<sup>18</sup>Section 22B inserted by No. 8 of 2000 s. 7.

<sup>19</sup>Section 22C inserted by No. 8 of 2000 s. 8.

<sup>20</sup>Section 22D inserted by No. 8 of 2000 s. 9.

if the Court is of opinion that in all the circumstances of the case the matter is a fit subject for determination by the National Court the Court shall—

- (c) abstain from adjudication; and
- (d) in the case of an indictable offence, direct the person charged with the offence to be tried and commit him to custody or admit him to bail for trial.

#### **24. TRANSFER OF PROCEEDINGS.**

(1) Where proceedings have been commenced in a Court, the Court may, at any time before judgement, with or without an application from an interested person for that purpose, for reasons that shall be recorded, make an order staying the proceedings and, on such terms as to it seem just transferring the proceedings for hearing and determination by some other District Court or, if the proceedings are such that they could have been instituted before the National Court in the first instance, by the National Court.

(2) The National Court may at any time before verdict or judgement, with or without an application from an interested person in that behalf, make an order staying proceedings before a District Court and ordering that the proceedings be taken before the National Court, if the proceedings are such that they could have been instituted before the National Court in the first instance.

#### **25. EX PARTE ORDER MAY BE SET ASIDE.**

A conviction or order made when one party does not appear may be set aside on application to the Court on such terms as to costs or otherwise as the Court thinks just, and the Court, on service on the other party of such reasonable notice as the Court directs, may—

- (a) proceed to hear and determine the information or complaint in respect of which the conviction or order was made; or
- (b) adjourn the hearing and determination of the hearing to such time and place as it thinks fit and direct such notice of the adjourned hearing as it thinks fit to be given to a party.

#### **26. MAJORITY TO DECIDE.**

Except as otherwise provided in this Act, where two or more Magistrates are present in Court and acting at the hearing of a matter and do not agree, the decision of the majority shall be the decision of the Court, and if they are equally divided in opinion—

- (a) in the case of an information—the matter shall be reheard before another Magistrate or other Magistrates at a time to be appointed by the Court; and
- (b) in the case of a complaint—the Chairman of the Court shall have a second or casting vote.

**27. SUNDAY A COURT DAY.**

A Court may hear and determine an information or complaint on a Sunday as on any other day.

**PART IV. – COMMENCEMENT OF PROCEEDINGS.**

*Division 1.*

*General.*

**28. INFORMATION AND COMPLAINTS.**

<sup>21</sup>Proceedings before a Court shall be commenced—

- (a) by an information or a complaint, which may be laid by the complainant in person, or by his legal representative or other person authorized for the purpose; or
- (b) by a Traffic Infringement Summons.

*Division 2.*

*Informations.*

**29. INFORMATION TO BE FOR ONE MATTER ONLY.**

An information shall be for one matter only, except that—

- (a) in the case of indictable offences, if the matters of the information are such that they may be charged in one indictment; and
- (b) in other cases, if the matters of the information are substantially of the same act or omission on the part of the defendant,

those matters may be joined in the same information.

**30. DESCRIPTION OF PERSONS, PROPERTY AND OFFENCES.**

(1) Such description of persons or things as would be sufficient in an indictment is sufficient in an information.

(2) The description of an offence in the words of that Act, order or instrument creating the offence, or in similar words, is sufficient in law.

**31. PARTICULARS.**

A Court or a Magistrate may, if it or he thinks fit, direct particulars to be delivered to the defendant of a matter alleged in an information and may adjourn the hearing for that purpose.

**32. WANT OF FORM OR VARIANCE IN INFORMATION, ETC.**

No objection shall be taken or allowed to an information, or to a summons or warrant to apprehend a defendant issued on an information, for an alleged defect in the information in substance or in form, or for a variance between it and the evidence

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<sup>21</sup> Section 28 replaced by No. 1 of 1981, s2.

in support of the information, and any such variance may be amended by order of the Court at the hearing.

### 33. AMENDMENT.

If a variance specified in Section 32 appears to the Court to be such that the defendant has been deceived or misled by it, the Court may, and at the request of the defendant shall, adjourn the hearing of the case, on such terms as it thinks just, to some future day, and in the meantime may commit the defendant or discharge him on bail on recognizance for his appearance at the time and place to which the hearing is adjourned.

### 34. MINUTE OF AMENDMENT.

An order for the amendment of a variance shall be entered on the proceedings of the Court, and a minute of the amendment, if required, shall be given to the party against whom it was made.

### 35. FORM OF INFORMATION.

(1) Where it is intended to issue a warrant in the first instance against the party charged, the information shall be in writing and on oath either by the informant or some other person.

(2) Where it is intended to issue a summons instead of a warrant in the first instance, the information need not be in writing or on oath, but may be verbal only and without oath, whether the law under which the information is laid requires it to be in writing or not.

### 36. LIMITATION OF PROCEEDINGS.

<sup>22</sup>(1) Subject to Subsection (2), in the case of a simple offence, unless some other time is limited for laying an information by the law relating to the particular case, the information may only be laid within six months after the time when the matter of the information arose.

(2) The time limit of six months referred to in Subsection (1) does not apply to an information laid for an offence specified in Schedule 2 to the *Criminal Code Act 1974*.

#### *Division 3.*

#### *Complaints.*

### 37. COMPLAINT MAY BE FOR ONE OR MORE MATTERS.

A complaint may be for one or more matters of complaint.

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<sup>22</sup> Section 36 repealed and replaced by the *District Courts (Amendment No. 2) Act 1986* (No. 45 of 1986), s1.

**38. DEMANDS NOT TO BE DIVIDED.**

(1) A complainant shall not divide a cause of action for the purpose of making two or more complaints before a Court, but a complainant having a cause of action for more than the amount for which a complaint may be made under this Act, may—

- (a) abandon the excess by so stating in his particulars of demand; and
- (b) recover to an amount not exceeding the amount that the Court has jurisdiction to award.

(2) The order of the Court on the complaint is conclusive evidence of abandonment of the excess and is in full discharge of all demands in respect of the cause of action, and entry of the order of the Court shall be made accordingly.

**39. INFANT MAY SUE.**

(1) A person under the age of 21 years may sue in a Court in all respects as if he were of full age.

(2) A person of or over the age of 16 years may be sued in a Court in all respects as if he were of full age.

(3) Notwithstanding Subsections (1) and (2), where it is necessary or desirable in the interests of justice to do so, a Court before which a person under the age of 21 years sues or is sued may appoint or require the appointment of a next friend or guardian *ad litem* of that person.

**40. COPY OF COMPLAINT.**

A person against whom a complaint has been made may receive a copy of the complaint free of charge from the Clerk who has custody of the complaint.

*Division 4.**Summons.***41. SUMMONS ISSUED BY MAGISTRATE.**

(1) Where an information is laid before a Magistrate that a person, whether within the limits of the jurisdiction of the Magistrate or not, is guilty of, or is suspected of, having committed an offence in the country, the Magistrate may issue his summons.

(2) Where a complaint is made to a Magistrate as to a matter within the limits of his jurisdiction on which a Court has authority to make an order, the Magistrate may issue his summons, whether or not he could determine the matter himself under Section 21.

**42. PERSONS TO WHOM SUMMONS TO BE DIRECTED.**

(1) A summons issued in the case of an information shall—

- (a) be directed to the defendant; and

- (b) state shortly the matter of the complaint; and
- (c) require the defendant to appear, at a certain time and place before such Magistrate as is then there, to answer to the complaint and to be further dealt with according to law.

(2) A summons to answer to a complaint shall—

- (a) be directed to the person named in the complaint as the person against whom the complaint is made; and
- (b) require that person to appear, at a time and place specified in the summons, before a Court to answer to the complaint; and
- (c) before the hearing is proceeded with—be lodged with the Clerk of the Court at the place at which the defendant is to appear, to be kept and preserved by the Clerk.

#### 43. EX PARTE PROCEEDINGS.

This Act does not oblige a Magistrate to issue a summons in a case where the application for an order of a Magistrate may by law be made *ex parte*.

#### 44. SIGNATURE AND CONTENTS OF SUMMONS.

(1) A summons shall be signed by the Magistrate issuing it and, unless it is a summons to give evidence or to produce documents, shall—

- (a) state shortly the offence or matter of the information or cause of complaint; and
- (b) name or otherwise describe the person against whom it is issued.

(2) A summons or process shall not be signed in blank.

#### 45. SUMMONS MAY BE ISSUED BY CLERK.

(1) Notwithstanding anything in this or any other Act—

- (a) a complaint may be made to, or an information laid before, and a summons issued on it by; and
- (b) a summons to give evidence or to produce documents may be signed and issued by,

the Clerk or a Magistrate.

(2) Where by this or any other Act it is provided that any summons referred to in Subsection (1) may or shall be issued by a Magistrate, the summons may also be issued by a Clerk.

(3) A summons issued on a complaint shall set out the address of the complainant at which all notices or documents shall be served.

**46. EXTENSION OF RETURN DATE OF SUMMONS.**

A Magistrate or Clerk may extend the time for hearing a summons as prescribed.

**47. SERVICE.**

(1) A summons shall be served at least 72 hours before the time appointed in the summons for the hearing—

- (a) in the case of a natural person—on the person to whom it is directed by delivering a copy of the summons to him personally or, if he cannot be found, by leaving it at his last known place of abode with some other person apparently an inmate and apparently not less than 16 years of age; and
- (b) in the case of a company incorporated under the *Companies Act 1997*—on the company in accordance with the provisions of that Act; and
- (c) in the case of any other corporation—
  - (i) by delivering a copy of the summons to the secretary or public officer or other chief officer of the corporation in the country; or
  - (ii) by sending it by post to the secretary, public officer or other chief officer at the last known address of the corporation in the country,

or in any other manner provided by law.

(2) Within seven days after service, a person who serves a summons shall make an affidavit, endorsed on the original summons, stating the day and place of service and shall immediately transmit the original summons to the Clerk for production at the time and place and before the Court specified in the summons.

(3) A document purporting to be an affidavit of service under Subsection (2) is *prima facie* evidence of the service of the summons.

**48. SUBSTITUTED SERVICE.**

If, by statement on oath or by affidavit, it is made to appear to a Court before which a summons is returnable, or to a Magistrate, that, for any cause, service in accordance with Section 47 cannot be promptly effected, the Court or Magistrate may extend the time for hearing and make an order for substituted or other service or for the substitution for service of notice by advertisement or otherwise.

*Division 5.**Warrants of Arrest.***49. ISSUE OF WARRANTS OF ARREST.**

- (1) Where an information is laid before a Magistrate—

- (a) that a person is suspected of having committed an indictable offence in the country; or
- (b) that a person charged with having committed an indictable offence of which cognizance may be taken by the courts of Papua New Guinea is suspected of being in the country,

the Magistrate may, subject to Subsection (2), issue his warrant for the arrest of that person and cause him to be brought before a Court to answer to the information and to be further dealt with according to law.

(2) In a case referred to in Subsection (1), the Magistrate, if he thinks fit, instead of issuing his warrant in the first instance for the arrest of the person charged, may proceed by summons and issue a summons against the person charged.

(3) Notwithstanding the issue of a summons, a Magistrate may issue his warrant at any time before or after the time specified in the summons for the appearance of the defendant.

## 50. WARRANT IN THE FIRST INSTANCE.

Where an information is laid before a Magistrate that a person is guilty of, or is suspected of having committed, a simple offence in the country, the Magistrate may, on oath being made before him substantiating the matter of the information to his satisfaction, instead of issuing a summons, issue in the first instance his warrant to apprehend the defendant and cause him to be brought before a Court to answer to the information and to be further dealt with according to law.

## 51. DIRECTION OF WARRANT.

A warrant to apprehend a defendant so that he may answer to an information may be directed to a police officer by name or generally to all police officers in the country without naming them, or to both.

## 52. ANY POLICE OFFICER MAY EXECUTE WARRANT.

Where a warrant is directed to all police officers, any police officer may execute the warrant as if it were directed specially to him by name.

## 53. FORM OF WARRANT.

A warrant shall—

- (a) state shortly the offence or matter of the information on which it is founded; and
- (b) name or otherwise describe the person against whom it is issued; and
- (c) order the police officer to whom it is directed to apprehend the defendant and to bring him before a Court to answer to the information and to be further dealt with according to law.

**54. ENDORSEMENT ON WARRANT AS TO RELEASE ON BAIL.**

(1) A Magistrate, on issuing a warrant for the arrest of a person, may, by endorsement on the warrant, direct that the person named in the warrant, on arrest, be released on bail on his entering into a recognizance, oral or in writing, with or without sureties, for his appearance in accordance with the endorsement, and the endorsement shall fix the amount in which the principal and sureties (if any) are to be bound.

(2) Where an endorsement is made under Subsection (1), the recognizance in accordance with the endorsement may be taken in accordance with Section 84 and the defendant shall be discharged.

**55. PERSON ARRESTED TO BE TAKEN BEFORE COURT.**

A person taken into custody for an offence shall be brought before a Court or a Magistrate as soon as practicable after he is taken into custody.

**56. BAIL OF PERSON ARRESTED.**

(1) Where a person is taken into custody for an offence and has not been brought before a Court, a Magistrate may—

- (a) commit the person to a correctional institution, police lock-up or other place of security until he can be brought before a Court to be dealt with according to law; or
- (b) discharge the person on bail on his entering into a recognizance, oral or in writing, with or without sureties, for such amount as in the discretion of the Magistrate appears reasonable, to appear before a Court at a time and place specified in the recognizance.

(2) Where a person is taken into custody for an offence, a Clerk or a police officer who is in charge of a police station may inquire into the case, and, except where the offence appears to the Clerk or police officer to be of a serious nature, may, if he thinks fit, discharge the person on bail on his entering into a recognizance, oral or in writing, with or without sureties, for such amount as appears reasonable, to appear before a Court at a time and place specified in the recognizance.

## PART V. – HEARING.

### *Division 1.*

#### *General.*

#### **57. OPEN COURT.**

(1) Subject to this Act and to any other law, the room or place in which a Court sits to hear and determine an information or complaint shall be an open and public court, to which all persons may have access so far as the room or place can conveniently contain them.

(2) Notwithstanding Subsection (1), but subject to Sections 59 and 60, where, in the opinion of a Court, the interests of public morality require that all or any persons should be excluded from the Court, the Court may exclude those persons from the Court.

#### **58. EXCLUSION OF STRANGERS.**

(1) The room or place in which a Court takes the examinations and statements of persons charged with indictable offences for the purposes of committal for trial, and the depositions of the witnesses for that purpose, shall not be deemed to be an open court, and the Court may, subject to Subsection (2) and to Sections 59 and 60, order that no person shall be in that room or place without its permission.

(2) A Court shall not make an order under Subsection (1) unless it appears to it that the interests of justice require it to do so.

(3) Where an order is made under Subsection (1), the Court shall not proceed to deal with a matter summarily without first adjourning the hearing and opening the Court, except in a case specified in Section 57(2).

#### **59. LEGAL REPRESENTATION.**

(1) A complainant or a defendant may be represented for the purpose of a proceeding by—

- (a) a lawyer; or
- (b) a person admitted as a trainee to the Legal Training Institute who is certified by the Director of the Institute to represent a party to the proceeding; or
- (c) subject to Subsection (3), a candidate for the degree of Bachelor of Laws at the University of Papua New Guinea who is certified by the Dean of the Faculty of Law, after consultation with a Magistrate nominated by the Magistrates Association, to act as a legal representative; or
- (d) any other person authorized by law; or
- (e) any other person by leave of the Court.

(2) On the hearing before a Court of an information, the informant may appear by a police officer.

(3) Where—

- (a) a person is a legal representative in a proceeding before a Court by virtue of Subsection (1)(c); and
- (b) the Court is satisfied, having regard to the conduct of that person, that representation by him in the proceeding is detrimental to the interests of the party represented,

the Court may make an order prohibiting that person from representing the party for the purpose of that proceeding.

(4) Where an order is made under Subsection (3) the Court shall give its reasons for the making of the order.

## 60. CONDUCT OF CASE, ETC.

(1) A complainant or defendant may himself or by his legal representative, conduct his case, and may examine or cross-examine, as the case requires, the witnesses giving evidence for or against him.

(2) A complainant or defendant may give evidence himself.

## 61. WHERE BOTH PARTIES PRESENT.

(1) If both parties appear, personally or by their legal representatives before the Court which is to hear and determine the information or complaint, the Court, subject to this Act, shall proceed to hear and determine the information or complaint with all due speed.

(2) This Act shall not be deemed—

- (a) to dispense with the personal attendance before the Court of a defendant who is charged with an indictable offence; or
- (b) to authorize the Court to proceed to hear and determine a charge of an indictable offence in the absence of the defendant.

## 61A. WITHDRAWAL OF INFORMATION.

<sup>23</sup>(1) Subject to Subsection (2), an informant may, at any time, advise the Court that he does not intend to proceed further in the matter the subject of the information.

(2) In relation to an offence under Section 420 of the *Criminal Code 1974*, no information shall be withdrawn without the consent of the Public Prosecutor.

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<sup>23</sup> Section 61A added by No. 32 of 1980, s7.

(3) On withdrawal of an information in accordance with this section, the defendant shall be discharged from any further proceedings in connection with the information.

***Division 2.***

***Evidence.***

**62. EXAMINATION TO BE ON OATH.**

(1) Subject to the *Oaths, Affirmations and Statutory Declarations Act 1962*, a person appearing to give evidence shall be examined on oath.

(2) The Court or a Magistrate may administer or cause to be administered, the usual or other lawful oath to every person referred to in Subsection (1).

(3) It is not necessary to administer an oath to a person who appears solely for the purpose of producing documents.

**63. ORDERING WITNESSES OUT OF COURT.**

At any time during the hearing, a Court may if it thinks fit, and shall if required by a party, order that all witnesses, other than the complainant and the defendant and the witnesses under examination, go and remain outside and beyond the hearing of the Court until required to give evidence, except in so far as in particular cases and in special circumstances it sees fit to do otherwise.

**64. PROOF OF EXCEPTIONS, ETC.**

(1) Where a person is charged before a Court with a simple offence, an exception, exemption, proviso, excuse or qualification, whether it accompanies the description of the offence in the section of the law creating the offence or not, need not be specified or negatived in the information.

(2) The burden of proof of an exception, exemption, proviso, excuse or qualification referred to in Subsection (1) is on the person alleging it.

**65. MODE OF TAKING EVIDENCE.**

In committal proceedings, the depositions of each witness shall be—

- (a) reduced to writing; and
- (b) read over to and signed by the witness; and
- (c) signed by the Magistrates constituting the Court.

**66. MAGISTRATE MAY SUMMON WITNESSES.**

A Magistrate may issue his summons to a person within his jurisdiction who is likely to have material evidence in relation to the matter of an information or complaint, or to a matter in connection with the information or complaint, requiring

him to be and appear before a Court at a time and place specified in the summons to testify what he knows concerning that matter.

**67. SERVICE, ETC., OF SUMMONS ON WITNESS.**

A summons to a witness shall be served, and a memorandum of service shall be endorsed on the summons, and proof of service may be given, in the same manner and within the same time as specified in Section 47 in the case of a summons to a defendant.

**68. WARRANT TO ATTEND.**

(1) If a person summoned as a witness refuses or neglects to appear at the time and place appointed by the summons, and no just excuse is offered for the refusal or neglect, then, after proof on oath that the summons was duly served on him and, except in the case of indictable offences, that a reasonable sum was paid or tendered to him for his costs and expenses of attendance, the Court before which he should have appeared may then and there impose on him in his absence a penalty of a fine not exceeding K200.00 which may be recovered in the same manner as that in which penalties imposed on a summary conviction may be recovered under Section 167.

(2) In addition to, or in substitution for, action under Subsection (1), a Court may issue its warrant to bring and have a person referred to in that subsection before the Court to testify at a time and place specified in the warrant.

**69. WARRANT IN THE FIRST INSTANCE.**

If a Magistrate is satisfied by evidence on oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled to do so, he may issue a warrant in the first instance instead of issuing a summons.

**70. REFUSAL OF WITNESS TO BE EXAMINED.**

(1) Where a person appears to give evidence or to produce documents, in obedience to a summons or by virtue of a warrant, or being present is orally required by the Court to give evidence or produce documents, and that person—

- (a) without lawful excuse, refuses to be examined on oath touching the matter of the information or complaint; or
- (b) refuses to take the oath; or
- (c) having taken the oath, refuses, without lawful excuse, to answer a question concerning the matter that is put to him; or
- (d) refuses or neglects to produce a document specified in the summons or warrant or orally required to be produced, without offering sufficient excuse for such refusal or neglect,

the Court may adjourn the proceedings for any period not exceeding eight days, and may in the meantime by warrant commit the person to a correctional institution, police lock-up or other place of security.

(2) If a person referred to in Subsection (1), on being brought up on the adjourned hearing, again refuses or neglects, the Court may again adjourn the proceedings and commit the person for a period specified in that subsection, and so again from time to time until he consents to be sworn or to give evidence or to produce the documents, as the case may be.

## 71. PRODUCTION OF DOCUMENTS.

(1) Subject to Subsection (2), where a Magistrate has authority to summon a person as a witness he has the same authority to require and compel the person to bring and produce for the purposes of evidence all documents and writings in his possession or power, and to proceed against him in case of neglect or refusal to do so, in the same manner as in the case of neglect or refusal to attend or refusal to be examined.

(2) A person is not bound to produce a document or writing not specified or otherwise sufficiently described in a summons, or which he would not be bound to produce on a subpoena *duces tecum* in the National Court.

## 72. EXAMINATION, ETC., OF PERSONS ABOUT TO LEAVE THE COUNTRY.

Where, by evidence on oath, a Magistrate is satisfied that—

- (a) a person is able to give material evidence or to produce relevant or material documents relating to a complaint pending before a Court; and
- (b) the person is likely to be absent from the country when the case comes on for hearing,

the Magistrate may, on the application of a party, order that the evidence of that person be taken or the documents be produced before him at any time before the hearing in the same manner as the evidence would be taken or the documents produced at the hearing, and after reasonable notice of the intended examination or production is given to the other party.

## 73. WITNESSES' RIGHTS AND LIABILITIES.

Where an order under Section 72 is served on a person together with the payment or tender of a reasonable sum for expenses, that person shall attend at the time and place appointed, and has all the rights and liabilities which he would have if he were duly summoned to appear to give evidence or to produce documents on the hearing.

**74. DEPOSITIONS AND DOCUMENTS UNDER SECTION 72.**

(1) Depositions taken under Section 72 shall be signed by the witness and the Magistrate, and the depositions and any documents produced shall be delivered by the Magistrate to the Clerk.

(2) Where documents are produced under Section 72 by a person who does not give evidence, on delivery to the Clerk the documents shall be accompanied by a certificate signed by the Magistrate stating the name of the person producing them.

(3) Where the Court is satisfied that the person who made a deposition under Section 72 is not in the country his deposition may be read by a party.

(4) Subject to all just exceptions, a document delivered to the Clerk under this section may be put in at the hearing as if produced at the hearing by the person who produced it.

*Division 3.**Remand.***75. REMAND OF DEFENDANT.**

Where a person is charged before a Court with an indictable offence, and, from the absence of witnesses or from any other reasonable cause, it becomes necessary or advisable to defer the hearing of the case, the Court before which the accused person appears or is brought may adjourn the hearing from time to time, for such period not exceeding 15 days at any one time, as the Court in its discretion considers reasonable, and may—

- (a) by warrant remand the defendant to a correctional institution, police lock-up or other place of security, to be kept there until the time appointed for continuing the hearing; or
- (b) subject to this Act, order the discharge of the defendant on bail on his entering into a recognizance in accordance with this Act.

**76. VERBAL REMAND.**

If a remand under Section 75 is for a time not exceeding seven days, the Court may verbally order the person in whose custody the defendant then is, or any other person named by the Court for the purpose, to keep the defendant in his custody and to bring him before the Court at the time and place appointed for continuing the hearing.

**77. BRINGING UP DURING REMAND.**

The Court may order a defendant referred to in Section 75 to be brought before it at any time before the expiration of the time for which he was remanded under that section.

*Division 4.*  
*Comittal and Recognizance.*

**78. COMMITTAL ON REMAND, ETC.**

Where a Court commits a defendant by way of remand or on adjournment, or at any time before the decision, it shall commit to a correctional institution, police lock-up or any other place of security in the area for which it is established, or to such other safe custody as it thinks fit.

**79. COMMITTAL OF WITNESS AND DEFENDANT AFTER DECISION.**

Where a Court commits a witness or a person sought to be made a witness, and where it commits a defendant after the decision, it shall commit to a correctional institution or police lock-up.

**80. WITNESSES ON RECOGNIZANCE.**

A witness or person sought to be made a witness may be discharged on bail on recognizance in accordance with this Act.

**81. RECOGNIZANCES.**

Subject to this Act, where a Court or Magistrate is authorized to discharge a defendant, witness or other person on bail on recognizance, the Court or Magistrate may order his discharge on bail on his entering into a recognizance with or without sureties at the discretion of the Court or Magistrate, conditioned for his appearance at the time and place to which the hearing is adjourned or which is named in the recognizance.

**82. CONTINUOUS BAIL.**

Where a person is remanded or discharged on bail on recognizance, the recognizance may be conditioned for his appearance at every time and place to which, during the course of the proceedings, the hearing may be from time to time adjourned, without prejudice to the power of the Court to vary the order at a subsequent hearing.

**83. WARRANT FOR NON-APPEARANCE.**

If a defendant, witness or other person does not appear at the time and place specified in a recognizance under this Act, the Court may adjourn the hearing, and may issue a warrant in accordance with Division IV.5 for his apprehension.

**84. RECOGNIZANCES TAKEN OUT OF COURT.**

(1) Where a Court or Magistrate has fixed as regards a recognizance the amount in which the principal and sureties (if any) are to be bound, the recognizance,

notwithstanding anything in this or any other Act, need not be entered into before the Court or Magistrate, but may be entered into by the parties before—

- (a) a Magistrate; or
- (b) a Clerk; or
- (c) a police officer who is in charge of a police station; or
- (d) the officer-in-charge of a correctional institution or police lock-up where any one of the parties is detained in that institution or lock-up.

(2) Where a recognizance is entered into out of Court under Subsection (1), all the consequences of law ensue, and the provisions of this Act with respect to recognizances taken before Courts or Magistrates apply as if the recognizance had been entered into before the Court or Magistrate under Section 81.

#### **85. RECOGNIZANCES TAKEN SEPARATELY.**

Where, as a condition of his release, a person is required to enter into a recognizance with sureties, the recognizances of the sureties may be taken separately and either before or after the recognizance of the principal and, if so taken, the recognizances of the principal and sureties are as binding as if they had been taken together and at the same time.

#### **86. ARREST OF PERSON RELEASED ON BAIL.**

(1) Where a recognizance is conditioned for the appearance of a person on a certain day before a Court or to take his trial before the National Court a police officer who has reasonable grounds for suspecting that the person will not voluntarily appear or surrender himself may apprehend the person and bring him before a Court before the day appointed.

(2) The Court before which a person is brought under Subsection (1) may—

- (a) commit him to a correctional institution, police lock-up or other place of security or other safe custody to be brought before the Court or the National Court, as the case may be, at the time and place specified in the recognizance for his appearance; or
- (b) discharge him on bail on his entering into a recognizance, with or without sureties, to appear before the Court or the National Court (as the case may be) at the time and place specified in that recognizance,

and shall, in either case, order that the first recognizance be discharged.

#### **87. CONVEYING PRISONERS TO CORRECTIONAL INSTITUTION, ETC.**

The person to whom a warrant of commitment is directed shall convey the person named or described in the warrant to the correctional institution, police lock-up or other place specified in the warrant and deliver him together with the warrant to the officer-in-charge of the institution, lock-up or place, who shall give the person delivering the prisoner into his custody a receipt for the prisoner, setting out the

state and condition in which the prisoner was when he was delivered into the custody of the officer.

***Division 5.***

***Adjournment of Proceedings.***

**88. MAGISTRATE MAY ADJOURN GENERALLY.**

Where all the cases have not been heard and determined at a sitting of a Court, the Court may adjourn the cases remaining unheard or undetermined to the next day appointed for the holding of the Court or to such other time as it thinks fit.

**89. ADJOURNMENT OF PARTICULAR CASES.**

(1) Where, before or during the hearing or further hearing of an information, other than an information of an indictable offence or complaint, it appears to the Court advisable, the Court, in its discretion, may adjourn the hearing or further hearing to a time and place to be then appointed or indefinitely.

(2) In the case of the adjournment of the hearing or further hearing of an information (other than an information of an indictable offence), the Court, during the adjournment, may—

- (a) suffer the defendant to go at large; or
- (b) commit him to a correctional institution, police lock-up or other place of security or to such other safe custody as it thinks fit; or
- (c) discharge him on bail on his entering into a recognizance for a reasonable amount, with or without sureties, at the discretion of the Court, conditioned for his appearance at the time and place to which the hearing or further hearing is adjourned.

**90. PROCEEDINGS AT ADJOURNED HEARING.**

If, at the time and place to which the hearing or further hearing is adjourned under Section 89, the parties appear personally or by their legal representatives—

- (a) if the Court includes a Magistrate before whom the hearing, up to the time of the adjournment, did not take place—that Magistrate shall withdraw, or the Magistrate present may proceed with the hearing as if it had not been commenced; and
- (b) if the Court does not include any such Magistrate—the Court, subject to this Act, may proceed with the further hearing.

**91. WITNESSES TO ATTEND ADJOURNED Sittings.**

All persons whose attendance has been required by summons in a case that has been adjourned or postponed shall attend at the time and place to which the case

has been adjourned or postponed without the issue or service of a further summons, but are entitled to their additional expenses for attending.

**92. POSTPONEMENT OF HEARING.**

Where—

- (a) on the return of a summons; or
- (b) at an adjournment of the hearing or further hearing; or
- (c) at the time to which the hearing or further hearing is postponed,

there is not present a Magistrate legally competent to hear and determine the subject-matter of the summons, any Magistrate present, or if no Magistrate is present, the Clerk may, and after the lapse of an hour, if the complainant or informant so requests shall, postpone the hearing until the next day on which a Court will be held at the place specified in the summons or to which the case has been adjourned.

## PART VI. – PROCEEDINGS IN CASE OF INDICTABLE OFFENCES.

### Division 1.

#### General.

##### 93. DISOBEDIENCE TO SUMMONS.

<sup>24</sup>Where a person—

- (a) is charged with—
  - (i) an indictable offence that shall not be tried summarily; or
  - (ii) an offence against Section 420 of the *Criminal Code 1974* where the offence is not to be tried summarily; and
- (b) fails to appear in answer to a summons issued against him before the Court at the time and place specified in the summons, and it is made to appear to the Court on oath that the summons was duly served on him a reasonable time before the time appointed for appearing to it,

the Court may, on oath being made before it, substantiating the matter of the information to its satisfaction, issue its warrant for the arrest of the defendant to bring him before a Court to answer to the information and to be further dealt with according to the law.

##### 94. COPY OF INFORMATION, ETC., TO BE SERVED.

<sup>25</sup>(1) Subject to Subsection (6), where a person is charged with—

- (a) an indictable offence that shall not be tried summarily; or
- (b) an offence against Section 420 of the *Criminal Code 1974* where the offence is not to be tried summarily,

the informant shall serve or caused to be served, in accordance with Subsection (3), on the defendant or his legal representative—

- (c) a copy of the information; and
- (d)<sup>26</sup> a copy of each statement that the informant intends to tender at the committal hearing; and
- (e) a list of documents and exhibits referred to in a statement referred to in Paragraph (d) that the informant intends to tender at the committal hearing; and
- (f) a copy of each document referred to in Paragraph (e).

<sup>24</sup> Section 93 replaced by No. 31 of 1980, s1.

<sup>25</sup> Section 94 replaced by No. 27 of 1981, ; amended by No. 31 of 1981, s1.

<sup>26</sup> Section 94(1)(d) amended by the *District Courts (Amendment No. 2) Act 1986* (No. 45 of 1986), s2(a).

(1A)<sup>27</sup> <sup>28</sup>A statement referred to in Subsection (1)(d) shall contain the following warning to the maker of the statement and shall be signed by the maker of the statement:—

“I ... certify that this statement is true to the best of my knowledge and belief. I make it knowing that if it is tendered in evidence I will be liable to prosecution if I have knowingly stated anything that is false or misleading in any particular.

Signed.”

(1B)<sup>29</sup> <sup>30</sup>A statement referred to in Subsection (1)(d) shall, for the purposes of Division III.2 of the *Evidence Act 1975*, be treated as an affidavit.

(2) Where an exhibit referred to in Subsection (1)(e) cannot be copied or adequately described, the defendant shall be notified of the place nominated by the informant where the exhibit may be inspected.

(3) Service of the documents and photographs (if any) under Subsection (1) shall be effected—

- (a) in the case of a natural person—on the person to whom they are directed by delivering them to him personally; and
- (b) in the case of a company incorporated under the *Companies Act 1997*—on the company in accordance with that Act; and
- (c) in the case of any other corporation—
  - (i) on the secretary or public officer or other chief officer of the corporation in the country; or
  - (ii) by sending them by post to the secretary, public officer or chief officer at the last known address of the corporation in the country,

or in any other manner provided by law, at least 14 days before the date fixed for the hearing.

(4) A person who carries out the service under Subsection (3) shall—

- (a) within seven days after service—make an affidavit stating the day and place of service; and
- (b) at least 72 hours before the date fixed for hearing—transmit the affidavit to the Clerk for production at the time and place and before the Court before which the hearing is to take place.

(5) A document purporting to be an affidavit of service under Subsection (4) is *prima facie* evidence of service under this section.

(6) Where a Court considers it expedient to do so, it may—

<sup>27</sup> Section 94(1A) inserted by the *District Courts (Amendment No. 2) Act 1986* (No. 45 of 1986), s2(b).

<sup>28</sup> Section 94(1A) inserted by the *District Courts (Amendment No. 2) Act 1986* (No. 45 of 1986), s2(b).

<sup>29</sup> Section 94(1B) inserted by the *District Courts (Amendment No. 2) Act 1986* (No. 45 of 1986), s2(b).

<sup>30</sup> Section 94(1B) inserted by the *District Courts (Amendment No. 2) Act 1986* (No. 45 of 1986), s2(b).

- (a) waive the requirements for service of documents or exhibits under this section; and
- (b) allow the informant or defendant to call oral evidence and tender exhibits at a committal hearing.

#### **94A. PENALTY FOR FALSE DECLARATION.**

<sup>31</sup>A person who, in relation to a statement or document referred to in Section 94(1), knowingly makes a statement that is false or misleading in any particular is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three years.

#### **94B. COMMITTAL FOR TRIAL WITHOUT CONSIDERATION OF THE EVIDENCE.**

<sup>32</sup>(1) Subject to Subsection (2), a Court inquiring into an offence may, if it is satisfied that all the evidence, whether for the prosecution or the defence, consists of written statements, with or without exhibits, tendered to the Court after service in accordance with Section 94, commit the defendant for trial for the offence without consideration of the contents of the statements.

(2) Committal for trial in accordance with Subsection (1) shall not occur where—

- (a) the defendant or one of the defendants does not have legal representation; or
- (b) the legal representative of the defendant or one of the defendants, as the case may be, requests the Court to consider a submission that the statements referred to in Subsection (1) do not disclose sufficient evidence to put the defendant on trial for the offence.

#### **94C. REGARD TO EVIDENCE, ETC.**

<sup>33</sup>(1) When conducting a committal hearing under this Part, the Court may, subject to Subsection (2), have regard to—

- (a) the evidence contained in a written statement; and
- (b) documents and exhibits,

of which a copy has been served on the defendant under Section 94(1) or made available for inspection under Section 94(2).

(2) Before admitting a written statement, the Court shall be satisfied that the person who made the statement had read and understood it, or if unable to read, had had it read to him in a language that he understood.

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<sup>31</sup> Section 94A added by No. 31 of 1980, s3.

<sup>32</sup> Section 94B added by No. 31 of 1980, s3.

<sup>33</sup> Section 94C added by No. 31 of 1980, s3.

## 95. COURT TO CONSIDER WHETHER PRIMA FACIE CASE.

(1)<sup>34</sup> <sup>35</sup>Where all the evidence offered on the part of the prosecution has been heard or received, the Court shall consider whether it is sufficient to put the defendant on trial.

(2) If the Court is of opinion that the evidence is not sufficient to put the defendant on trial for an indictable offence it shall immediately order the defendant, if in custody, to be discharged as to the information then under inquiry.

(3) If the Court is of opinion that the evidence is sufficient to put the defendant on trial for an indictable offence, it shall proceed with the examination in accordance with this Division.

## 96. ACCUSED TO BE ASKED WHETHER HE DESIRES TO GIVE EVIDENCE.

(1) Where a Court proceeds with the examination of a defendant in accordance with this Division, the Court or the Chairman of the Court shall read the charge to the accused and explain its nature in ordinary language and shall say to him these words, or words to the same effect—

“Having heard the evidence for the prosecution do you wish to be sworn and give evidence on your own behalf, or do you desire to say anything in answer to the charge? You are not obliged to be sworn and give evidence, nor are you required to say anything, unless you desire to do so; but whatever evidence you may give on oath, or anything you may say, will be taken down in writing, and may be given in evidence on your trial. You are clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence on your trial, notwithstanding any such promise or threat.

“Having heard the evidence for the prosecution do you wish to be sworn and give evidence on your own behalf, or do you desire to say anything in answer to the charge? You are not obliged to be sworn and give evidence, nor are you required to say anything, unless you desire to do so; but whatever evidence you may give on oath, or anything you may say, will be taken down in writing, and may be given in evidence on your trial. You are clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence on your trial, notwithstanding any such promise or threat.”

(2) Anything that the defendant says in answer to a statement made in accordance with Subsection (1) shall be—

(a) taken down in writing in the English language and read to him; and

<sup>34</sup> Section 95(1) amended by No. 31 of 1980, s4.

<sup>35</sup> Section 95(1) amended by No. 31 of 1980, s4.

- (b) signed by the Magistrates constituting the Court and by the defendant if he so desires; and
- (c) kept with the depositions of the witnesses and transmitted with them to the Public Prosecutor.

(3)<sup>36</sup> <sup>37</sup>In an examination of a defendant in accordance with this Division neither the defendant nor his legal representative shall be permitted to subject any witness to cross-examination.

## 97. STATEMENT MAY BE PUT IN EVIDENCE AT TRIAL.

<sup>38</sup>On the trial of a defendant for an offence for which he has been committed for trial or for any other offence arising out of the same transaction or set of circumstances as that offence, a statement made by him under Section 96 may be given in evidence without further proof, notwithstanding that the statement may be exculpatory or self-serving, if the statement purports to be signed by the Magistrates by or before whom it purports to have been taken, unless it is proved that it was not in fact signed by those Magistrates.

## 98. SAVING.

This Act does not prevent the prosecutor from giving in evidence an admission or confession or other statement of the defendant, which by law would be admissible as evidence against that person.

## 99<sup>39</sup>. [REPEALED.]

## 100. DISCHARGE OR COMMITTAL OF DEFENDANT.

<sup>40</sup>(1) When an examination under this Division is completed, the Court shall consider whether the evidence is sufficient to put the defendant on trial.

(2) If, in the opinion of the Court, the evidence is not sufficient to put the defendant on trial, it shall immediately order the defendant, if in custody, to be discharged as to the information then under inquiry.

(3) Where—

- (a) in the opinion of the Court, the evidence is sufficient to put the defendant on trial; or
- (b) the Court commits the defendant for trial under Section 94B(1)—

the Court shall—

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<sup>36</sup> Section 96(3) added by No. 8 of 2000 s. 10.

<sup>37</sup> Section 96(3) added by No. 8 of 2000 s. 10.

<sup>38</sup> Section 97 amended by No. 31 of 1980, s5.

<sup>39</sup> Section 99 repealed by No. 31 of 1980, s6.

<sup>40</sup> Section 100 replaced by No. 31 of 1981, s2.

- (c) by warrant commit the defendant to a correctional institution, police lock-up or other place of security to be kept there safely until the sitting of the National Court before which he is to be tried, or until he is delivered by due course of law; or
- (d) admit him to bail in accordance with Division 2.

**101<sup>41</sup>. [REPEALED.]**

**102. STATEMENTS OF WITNESSES DEAD, ETC.**

<sup>42</sup>Where a person has been committed for trial or sentence for an offence all statements tendered in evidence to the Magistrate constituting the Court may, with the consent of the National Court, be taken without further proof as evidence on the trial, whether for that offence or for any other offence arising out of the transaction or set of circumstances as that offence on proof—

- (a) that the witness who made a statement is—
  - (i) dead or insane; or
  - (ii) so ill as not to be able to travel; or
  - (iii) kept out of the way by means of the procurement of the accused or on his behalf; or
  - (iv) a person registered under the *Medical Registration Act 1980*; or
- (b) either by a certificate purporting to be signed by the Court or by one of the Magistrates to whom the statement was tendered, or by the oath of a credible witness—that the statement was served on the accused or his legal representative.

**103. COMMITTAL FOR SENTENCE.**

<sup>43</sup>(1) If a defendant, on being asked in accordance with Section 96 whether he wishes to say anything in answer to the charge says that he is guilty of the charge, the Court shall further say to him these words, or words to the same effect—

“You will now be committed for sentence instead of being committed for trial.”

- (2) The statement by the defendant in accordance with Subsection (1) shall be—
  - (a) taken down in writing and read to him; and
  - (b) signed by the Magistrate constituting the Court and by the defendant if he so desires; and
  - (c) held with the statements of the witnesses and transmitted with them to the Public Prosecutor.

<sup>41</sup> Section 101 repealed by 31 of 1980, s. 7.

<sup>42</sup> Section 102 replaced by No. 31 of 1981, s8.

<sup>43</sup> Section 103 replaced by No. 31 of 1981, s9.

(3) In a case referred to in Subsection (1), the Court, instead of committing the defendant for trial, shall order him to be committed for sentence before the National Court, and in the meantime, shall—

- (a) by warrant commit him to a correctional institution, police lock-up or other place of security to be kept safely until the sittings of the National Court, or until he is delivered by due course of law; or
- (b) admit him to bail to appear for sentence in accordance with Division 2.

***Division 2.***

***Bail.***

**104. BAIL IN CAPITAL OFFENCES.**

A person charged with a capital offence shall not be admitted to bail except by order of the National Court or a Judge.

**105. BAIL IN CRIMES AND MISDEMEANOURS.**

(1) Where a person is charged before a Court with an indictable offence (other than a capital offence), the Court may—

- (a) admit him to bail instead of committing him for trial or for sentence under Section 100 or 103; or
- (b) commit him for trial and certify for his admission to bail.

(2) Where a person charged with an indictable offence (other than a capital offence) is committed to a correctional institution, police lock-up or other place of security or other safe custody, for trial or for sentence for the offence, a Magistrate may admit the defendant to bail at any time before the first day of the sitting or session at which he is to be tried or before the day to which the sitting or session is adjourned.

**106. BAIL AFTER COMMITMENT FOR TRIAL.**

Where a defendant who is charged with an offence for which bail is authorized or required to be granted is committed for trial or for sentence, the Magistrates constituting the Court by which he is committed may admit the defendant to bail, or certify for his admission to bail, at any time before the first day of the sitting or session at which he is to be tried or sentenced, as the case may be, or before the day to which the sitting or session is adjourned.

**107. AMOUNT AND FORM OF RECOGNIZANCE.**

(1) Where in this Division a Court or Magistrate is authorized to admit a defendant to bail, it or he shall do so only on the defendant entering into a recognizance, oral or in writing, with or without sureties, to ensure his appearance at the time when and the place where he is to be tried or sentenced.

(2) A recognizance under Subsection (1) shall be conditioned for the appearance of the defendant at the time when and the place where he is to be tried or sentenced and that he will then surrender and take his trial or appear for sentence and not depart from the Court without leave from the Court.

**108. CERTIFICATE FOR BAIL.**

(1) A certificate for the admission of a defendant to bail shall fix the amount in which the defendant and sureties (if any) are to be bound.

(2) On the issue of a certificate under Subsection (1), the recognizance may be entered into in accordance with Section 84.

(3) On production of a certificate and the recognizance or recognizances taken under Subsection (1), a Magistrate may release the defendant on bail.

**109. WARRANT OF DELIVERYANCE.**

Where a defendant is confined in a correctional institution, police lock-up or other place of security or other such safe custody charged with an offence for which he is admitted to bail, the Court or Magistrate which or who so admits him shall send to, or cause to be lodged with, the officer-in-charge of the correctional institution, police lock-up or place, a warrant of deliverance requiring that officer to discharge the defendant if he is detained for no other offence and on the warrant being delivered to or lodged with that officer he shall obey the warrant without delay.

**110. TRANSMISSION OF RECOGNIZANCES.**

When a defendant is admitted to or released on bail, copies of the recognizance or recognizances of bail shall be transmitted to the Public Prosecutor.

*Division 3.**-Recognizances of Witnesses to Appear on Trial.***111. RECOGNIZANCES OF WITNESSES, ETC.**

(1) Where a witness who, in the opinion of the Court, gives evidence in any way material to a case or tending to prove the guilt or innocence of an accused person, is examined before a Court, the Court may at any time bind the witness by recognizance, oral or in writing, to appear at the Court at which the defendant is to be tried, then and there to give evidence at the trial of the defendant.

(2) A recognizance under Subsection (1) shall particularly specify the profession, trade or calling of each person who enters into it, together with his full name or names and the place of his residence.

**112. EXECUTION OF RECOGNIZANCES.**

(1) A recognizance under Section 111 shall be duly acknowledged by every person who enters into it, and shall be subscribed by the Magistrates before whom it

is acknowledged and a notice of the recognizance signed by the Magistrates shall at the same time be given to every person bound by it.

(2) The recognizances of all or any two or more persons who are bound in the same sum or penalty may be included in one form or document, and the recognizance is as valid and effectual in respect of every such person as if it had been entered into by a separate form or document.

### 113. COURT MAY COMMIT REFRACTORY WITNESS.

(1) Subject to Subsection (2), if a witness refuses to enter into a recognizance under Section 111, the Court may by warrant commit him to a correctional institution, police lock-up or other place of security or other safe custody, there to be safely kept until after the trial of the defendant, unless in the meantime the witness enters into a recognizance before a Magistrate.

(2) If, after a witness is committed under Subsection (1)–

- (a) the Court before which the defendant has been brought does not commit him or admit him to bail for the offence with which he is charged; or
- (b) the duly appointed officer declines to file an information against the defendant for the offence,

a Magistrate, on being duly informed of the fact, and by his order for that purpose, may order and direct the officer-in-charge of the correctional institution, police lock-up or place in which the witness is in custody to discharge him.

(3) Where a witness has been committed under this section, the Court or the Clerk shall notify the Public Prosecutor in writing of the name of the witness.

### 114. DETENTION OF WITNESS.

Notwithstanding anything in this Division, if, in the opinion of the Court before which a witness is examined, it is desirable that the witness should be kept in safe custody, the Court may–

- (a) by warrant commit the witness to a correctional institution; or
- (b) by written order, authorize his detention in the custody of a police officer, or officer-in-charge of a place of security, without naming the officer,

to be safely kept until after the trial of the defendant.

### *Division 4.*

#### *Offences Committed in Remote Places.*

### 115. INDICTABLE OFFENCES COMMITTED OUTSIDE JURISDICTION OR IN REMOTE PLACES.

Where a person is charged before a Court with an indictable offence alleged to have been committed in a place remote from it, but within the jurisdiction of the

National Court, the Court shall receive such evidence in proof of the charge as is produced before it, and if, in the opinion of the Court, the evidence for the prosecution is sufficient to put the defendant on trial, shall proceed under Division 1.

**116. REMAND TO ANOTHER PLACE.**

(1) If, in a case referred to in Section 115, the evidence is not, in the opinion of the Court, sufficient to put the defendant on trial for the offence with which he is charged, the Court may—

- (a) bind over such witnesses as it has examined by recognizance to give evidence and by warrant order the defendant to be taken before a Court having jurisdiction—
  - (i) in or near the place where the offence is alleged to have been committed; or
  - (ii) in any other place in the country where any of the witnesses to be examined are; or
- (b) order his release on bail on recognizance to appear before the Court named in the recognizance.

(2) Where an order is made under Subsection (1), the Court shall transmit the information, and the depositions and recognizances taken by or before it, to the Court before which the defendant is to be taken or is to appear.

**117. EFFECT OF DEPOSITIONS.**

(1) Subject to Subsection (2), if the defendant is committed for trial on the charge or discharged on recognizance, the depositions and recognizances referred to in Section 116 shall—

- (a) be deemed to be taken in the case; and
- (b) be treated as if they had been taken by or before the Court before which the defendant is to be taken or is to appear; and
- (c) be transmitted to the Public Prosecutor together with the depositions and recognizances taken by that Court in the matter of the charge against the defendant, in the manner and at the time specified in Section 118.

(2) If the Court before which the defendant is taken or appears does not think the evidence against the defendant sufficient to put him on trial and discharges him without recognizances, the recognizances referred to in Section 116 become null and void.

**Division 5.****Miscellaneous.****118. TRANSMISSION OF NOTICE OF COMMITTAL, ETC.**

<sup>44</sup>The examining Court shall, after completion of proceedings in which a defendant is committed for trial or sentence, immediately transmit—

- (a) a notice of committal in the prescribed form to the Registrar of the National Court; and
- (b) copies of all statements and documents admitted in evidence by the Court and recognizance granted, to the Public Prosecutor.

**119. DEPOSITIONS, ETC., WITH PUBLIC PROSECUTOR.**

(1) After the transmission of the documents under Section 118 and before the day of trial, the Public Prosecutor has and is subject to the same duties and liabilities with respect to the documents on a *certiorari* directed to him or on a rule or order directed to him in lieu of that writ as the Court would have had and been subject to under a *certiorari* to it if the documents had not been transmitted.

(2) The Public Prosecutor, or the officer prosecuting a case in the National Court, after the opening of the National Court at the sitting at which the trial is to be heard, shall deliver the documents or any of them to the proper officer of the Court, or cause them to be so delivered, if the presiding Judge so directs.

**120<sup>45</sup>. [REPEALED.]****121. EXHIBITS.**

(1) Where a person charged with an indictable offence is directed by a Court to be tried, the Court shall retain custody of all exhibits tendered during the examination under this Part and—

- (a) if the person charged is indicted—they shall be delivered to the proper officer of the National Court in accordance with the Rules of Court of the National Court; and
- (b) if a *nolle prosequi* is entered or the person charged is otherwise discharged—they may be returned to the person who tendered them or other person entitled to the possession of them.

(2) Where exhibits are in the custody of the Court under Subsection (1) the person charged, the Public Prosecutor and the prosecutor are each entitled to inspect them either by himself or by a person authorized by him for that purpose.

<sup>44</sup> Section 118 replaced by No. 31 of 1981, s10.  
<sup>45</sup> Section 120 repealed by No. 31 of 1980, s11.

**PART VII. – PROCEEDINGS IN CASE OF SIMPLE OFFENCES AND INDICTABLE OFFENCES TRIABLE SUMMARILY<sup>46</sup>.**

*Division 1A.*

*Application.*

**121A. APPLICATION OF PART VII.**

<sup>47</sup>This Part does not apply to proceedings commenced by a Traffic Infringement Summons.

*Division 1.*

*Venue.*

**122. VENUE OF SUMMARY CASES.**

<sup>48</sup>(1) Subject to this Part, informations of simple offences shall be heard and determined at a place appointed for holding court within the province in which the offence or breach of duty was committed or in which the defendant usually resides or is at the time when the information is laid.

(2) If the offence was committed outside a province, but within 33 km of the boundary of the province, the information may be heard and determined, subject to Subsection (6), at a place appointed for holding Court within that province or within the province in which the offence was committed.

(3) If the offence was committed on a vessel within the territorial sea, or in any case with the consent of the defendant, the information may be heard and determined at any place in the country appointed for holding Court.

(4) An information of a simple offence or an indictable offence triable summarily against a law relating to companies may be heard and determined, subject to Subsection (6), in the province in which the registered office of the company is situated, or at Port Moresby.

(5) An indictable offence triable summarily under Section 420 of the *Criminal Code 1974* shall be heard and determined in a District Court constituted by a Principal Magistrate.

(6) For the purposes of Subsection (5), the sittings of the District Court for the hearing and determination of indictable offences triable summarily may be held at such time and place as determined by the Court.

<sup>46</sup> Part VII: Heading replaced by No. 32 of 1980, s8.

<sup>47</sup> Section 121A added by No. 1 of 1981, s3.

<sup>48</sup> Section 122 amended by No. 32 of 1980, s9; amended by No. 31 of 1981, s3.

### 123. ADJOURNMENT TO DIFFERENT PLACE.

<sup>49</sup>Where an information of a simple offence or an indictable offence triable summarily may lawfully be heard and determined at any one of two or more places, if, on the hearing of the information at one of those places, it appears to the Court that the hearing would more conveniently take place at another of those places, the Court may—

- (a) adjourn the matter to that other place; and
- (b) commit the defendant in the meantime or discharge him on bail on recognizance, oral or in writing, conditioned for his appearance at the time and place to which the hearing is adjourned,

and the defendant and every witness summoned to give evidence is bound to attend at that time and place.

#### *Division 2.*

#### *Hearing.*

### 124. ABSENCE OF COMPLAINANT.

<sup>50</sup>If, on the day and at the place appointed by a summons for hearing and determining an information of a simple offence or an indictable offence triable summarily—

- (a) the defendant attends voluntarily in obedience to the summons, or is brought before the Court by virtue of a warrant; and
- (b) the complainant, having had notice of the day and place, does not appear by himself or by his legal representative,

the Court shall dismiss the information unless for some reason it thinks proper to adjourn the hearing to some other day.

### 125. ABSENCE OF DEFENDANT.

<sup>51</sup>If, at the time and place appointed by a summons for hearing and determining an information of a simple offence, or an indictable offence triable summarily the defendant does not appear when called, and proof is made to the Court on oath, or in accordance with Section 47, of due service of the summons on the defendant a reasonable time before the time appointed for his appearance, the Court may—

- (a) in the case of a simple offence the maximum penalty for which does not include imprisonment (other than for default in payment of a fine)—proceed ex parte to hear and determine the case in the absence of the defendant; or

<sup>49</sup> Section 123 amended by No. 32 of 1980, s10.

<sup>50</sup> Section 124 amended by No. 32 of 1980, s11.

<sup>51</sup> Section 125 replaced by No. 32 of 1980, s12 ; amended by No. 31 of 1981, s4.

- (b) in the case of an information of a simple offence or an indictable offence triable summarily—on oath being made before it, substantiating the matter of the information to its satisfaction, issue its warrant for the arrest of the defendant to bring him before a Court to answer to the information and to be further dealt with according to law.

## 126. ADJOURNMENT OF CASE.

Where a Court issues its warrant under Section 125(b), it shall adjourn the hearing of the information until the defendant is arrested, and if the defendant is afterwards arrested under the warrant he shall be detained in safe custody until he can be brought before the Court at a convenient time and place, of which the complainant shall be given due notice.

## 127. BOTH PARTIES APPEARING.

If both parties appear at the hearing of an information personally or by their legal representatives the Court shall proceed to hear and determine the information.

## 128. PROCEEDINGS AT THE HEARING ON DEFENDANT'S ADMISSION.

<sup>52</sup>(1) At the time appointed for the hearing of an information of a simple offence or an indictable offence triable summarily, the defendant shall be informed in open court of the offence with which he is charged as set out in the information, and shall be called on to say if he is guilty or not guilty of the charge.

(2) When the defendant is called on under Subsection (1), the hearing is deemed to commence.

## 129. WHERE DEFENDANT DOES NOT ADMIT CASE.

<sup>53</sup>(1) Where the defendant pleads not guilty to the charge contained in the information the Court shall proceed to hear the complainant and his witnesses and the defendant and his witnesses and also such witnesses as the complainant examines in reply, if the defendant has given evidence other than as to his general character.

(2) The Court, having heard what each party has to say and the evidence adduced, shall consider and determine the whole matter, and shall convict or make an order on the defendant, or dismiss the information, as justice requires.

## 130. HEARING IN ABSENCE OF BOTH OR EITHER OF THE PARTIES.

If, at the time and place to which a hearing or further hearing of an information for a simple offence is adjourned, either or both of the parties does not or do not appear personally or by his or their legal representative or representatives, as the case may be, the Court may proceed to the hearing or further hearing as if the

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<sup>52</sup> Section 128 replaced by No. 32 of 1980, s13.; amended by No. 31 of 1981, s5.

<sup>53</sup> Section 129 amended by No. 32 of 1980, s14.;

party or parties were present or, if the complainant does not appear, the Court may dismiss the information with or without costs.

### 131. CONDUCT OF SUMMARY PROCEEDINGS.

<sup>54</sup>In respect of the examination and cross-examination of witnesses and the right of addressing the Court on the case in reply, or otherwise, the practice before a Court on the hearing of an information of a simple offence or an indictable offence triable summarily shall be in accordance, as nearly as practicable, with the practice for the time being in the National Court on the trial of an issue of fact in an action at law.

### 132. CONDITIONAL RELEASE, ETC.

(1) Where a person is charged before a Court with a simple offence or an indictable offence triable summarily, and the Court thinks that the charge is proved but is of opinion that, having regard to—

- (a) the character, antecedents, age, health or mental condition of the person charged; or
- (b) the trivial nature of the offence; or
- (c) the extenuating circumstances under which the offence was committed, it is inexpedient to inflict punishment, or other than a nominal punishment or that it is expedient to release the offender on probation, the Court may, without proceeding to conviction, make an order—
- (d) dismissing the charge; or
- (e) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as is specified in the order.

(2)<sup>55</sup> <sup>56</sup>An order made under Subsection (1) shall, for the purpose of—

- (a) revesting or restoring stolen property; and
- (b) enabling the Court to make orders as to the restitution or delivery of property to the owner; and
- (c) the payment of money on or in connection with that restitution or delivery; and
- (d) an appeal against conviction,

have the same effect as a conviction.

<sup>54</sup> Section 131 amended by No. 32 of 1980, s15.

<sup>55</sup> Section 132(1) amended by No. 32 of 1980, s16.

<sup>56</sup> Section 132(1) amended by No. 32 of 1980, s16.

**PART VIIA.<sup>57</sup> – PROCEEDINGS IN CASE OF TRAFFIC INFRINGEMENT SUMMONS.**

**132A. PRACTICE AND PROCEDURE IN CASES COMMENCED BY A TRAFFIC INFRINGEMENT SUMMONS.**

<sup>58</sup>(1) The following rules of procedure shall be followed by District Courts in cases commenced by a Traffic Infringement Summons:–

- (a) where the defendant has not made payment to the Clerk of the Court specified in the Traffic Infringement Summons of the sum specified, and within the time specified in the Summons, the case shall be called in that Court on the first day on which that Court sits following the expiry of a period of 14 days commencing on the day following the day on which the Traffic Infringement Summons was served; and
- (b) . . . [Declared unconstitutional.]
- (c) where the defendant appears or is represented when the case is called in the Court, the nature and particulars of the alleged offence shall be explained to the defendant in a language which he understands and he shall be asked whether he admits or denies the alleged offence; and
- (d) where the defendant does not plead guilty the trial shall proceed in accordance with Sections 129, 130 and 131 as if a Traffic Infringement Summons was an information of a simple offence; and
- (e) where the defendant pleads guilty, the Court shall consider its sentence which shall be pronounced in open court.

(2) For the purpose of Subsection (1)(b), an affidavit of service under Section 34A of the *Motor Traffic Act 1950* is *prima facie* evidence of the service of the Traffic Infringement Summons.

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<sup>57</sup> Part VIIA added by No. 1 of 1981, s4.

<sup>58</sup> Section 132A added by No. 1 of 1981, s4.

**PART VIII. – PROCEEDINGS IN CONNECTION WITH COMPLAINTS.**

***Division 1.***

***General.***

**133. PARTICULARS OF DEMAND AND SET-OFF.**

(1) Concise particulars of the complainant's demand with dates, items and prices or value shall be endorsed on or annexed to the summons on a complaint made in respect of a debt recoverable before a Court and shall be deemed to be part of the summons.

(2) Concise particulars of the defendant's set-off (if any) with dates, items and prices or value shall be endorsed on or annexed to the written notice of the set-off.

(3) Inaccuracies or omissions that in the opinion of the Court are not likely to mislead shall not vitiate particulars of demand or set-off, and no evidence shall be given in support of a debt not mentioned in the particulars if the opposite party objects to it.

(4) The Court, at any time before an order is made, may allow either party to alter or amend the particulars of his demand or set-off on such terms as to costs, adjournment or otherwise as the Court thinks just.

**134. PARTICULARS OF DEMAND FOR SUMS DUE TO BE IN PRESCRIBED FORM.**

Notwithstanding Section 133, where, on a complaint made in respect of a debt recoverable before a Court, a sum of money is claimed and particulars of the debt with dates, items and prices or value have at any time before the date of the complaint been delivered to the defendant or duly entered in a pass-book in the possession of the defendant, it is sufficient if the particulars of the demand to be endorsed on or annexed to the summons as required by that section are in such form as is prescribed for the purpose.

**135. FURTHER PARTICULARS MAY BE ORDERED.**

(1) At the hearing of a complaint under Section 134, the Court, on the application of the defendant, may order the complainant to deliver further and fuller particulars, wholly or in part, and with dates, items and prices or value, to the defendant or his legal representative within such time and on such terms as to costs or otherwise as the Court thinks just.

(2) The Court shall not make an order for particulars under Subsection (1) unless it is satisfied that the particulars are necessary for the purposes of the defence and are not demanded for the purpose of delay, and the Court may adjourn the hearing of the complaint and stay all proceedings until the order has been complied with.

**136. PARTICULARS OF SET-OFF.**

Sections 134 and 135, with the necessary modifications, apply to a set-off as if it were a complaint.

**137. EVIDENCE OF MATTERS NOT IN SUMMONS.**

Evidence of a demand or cause of action shall not be given on behalf of the complainant on the hearing of a complaint other than a demand or cause of action stated in the summons issued on the complaint, or in the summons as amended.

**138. GENERAL POWER OF AMENDMENT.**

On the hearing of a complaint, the Court may allow such amendment of the summons as it thinks just, and on such terms as it thinks just, and all such amendments shall be made as are necessary for the purpose of determining the real questions in controversy between the parties.

**139. WHEN FACTS ARE ADMITTED.**

(1) At the hearing, the substance of the complaint shall be stated to the defendant and he shall be asked if he has any cause to show why an order should not be made against him.

(2) If the defendant admits the truth of the complaint and shows no sufficient cause why an order should not be made against him, the Court, after hearing such evidence as it thinks fit with respect to the subject-matter of the complaint, shall make an order against him.

**140. MAGISTRATE MAY REQUEST STATEMENT OF DEFENCE BEFORE HEARING EVIDENCE.**

(1) At the close of the opening of the complainant's case and before any evidence is taken, the defendant shall, if called on by the Magistrate, by himself or by his legal representative give a concise statement of his defence to the complaint and of the points on which he relies, and except by leave of the Magistrate is not at liberty to enter on or to give evidence as to any matter not included in the defence and points so stated.

(2) The provisions of this section, with the necessary modifications, apply to defences to counter-claims.

**141. WHEN FACTS NOT ADMITTED.**

If the defendant does not admit the truth of the complaint, the Court shall proceed—

- (a) to hear the complainant and such witnesses as are examined on his behalf, and such other evidence as is adduced in support of the complaint; and

- (b) to hear the defendant and such witnesses as are examined on his behalf, and such other evidence as is adduced in his defence; and
- (c) to hear such witnesses as the complainant examines in reply, if any evidence has been given on behalf of the defendant.

#### **142. CONDUCT OF PROCEEDINGS.**

In respect of the examination and cross-examination of witnesses and the right of addressing the Court in reply, or otherwise, the practice before a Court on the hearing of a complaint shall be in accordance, as nearly as practicable, with the practice for the time being of the National Court on the trial of an action at law.

#### **143. WHERE DEFENDANT DOES NOT APPEAR.**

Where, in the case of a complaint, the defendant does not appear at the place and at the time specified in the summons, or at the place and time to which the hearing was adjourned or postponed, as the case may be, if—

- (a) it appears to the Court on oath that—
  - (i) the summons was duly served at least 72 hours before the time appointed in the summons for appearing; or
  - (ii) an order for substituted or other service or for the substitution for service of notice by advertisement or otherwise was duly complied with; and
- (b) no sufficient grounds are shown for an adjournment,

the Court may proceed *ex parte* to hear and determine the complaint or may adjourn the hearing to a future day.

#### **144. WHERE COMPLAINANT DOES NOT APPEAR.**

Where, at the time and place specified in a summons, the defendant attends in obedience to the summons served on him for that purpose, but the complainant does not appear by himself or by his legal representative, the Court shall—

- (a) dismiss the complaint and hear and determine the defendant's set-off, if he has given notice of set-off; or
- (b) if it thinks proper, adjourn the hearing or further hearing of the complaint and set-off to some other day on such terms as it thinks fit.

#### **145. STATEMENT OF DEFENCE, ETC, TO BE IN WRITING.**

(1) Where the defendant is required to give, and gives, a statement of his defence and the points on which he relies, the Court shall—

- (a) cause the statement and points to be taken down in writing; and
- (b) preserve the writing.

(2) The Court shall cause—

- (a) the evidence to be taken down in writing and signed by the respective witnesses; and
- (b) all exhibits put in evidence to be marked so as to be clearly identified as those exhibits; and
- (c) the Clerk to make and preserve a list of the exhibits marked.

(3) The Court may order the exhibits or any of them to be retained by the Clerk until the further order of the Court.

(4) On an appeal from an order of the Court, it shall be deemed—

- (a) where the statement and points were taken down in writing under Subsection (1)—that no other defence and points were replied on at the hearing; and
- (b) where the evidence was taken down and signed and the exhibits marked—
  - (i) that no evidence other than that so taken down in writing and signed was given at the hearing; and
  - (ii) that no exhibits other than those so marked or specified in the list were put in evidence at the hearing.

#### **146. COURT TO DECIDE CASE.**

The Court, having heard what each party has to say and the evidence adduced by each, shall consider and determine the whole matter, and shall make an order against the defendant or dismiss the complaint, or make an order against the complainant or dismiss the set-off, as the case requires.

#### **147. COMPLAINANT MAY DISCONTINUE.**

On the hearing of a complaint or set-off the complainant, or, in case of set-off, the defendant, in order to avoid a dismissal may, on the immediate payment to the defendant or complainant, as the case may be, of such reasonable costs as are fixed by the Court, withdraw or discontinue the complaint or set-off before it is determined, and then the complaint or set-off shall not be dismissed and the complainant or defendant, as the case may be, may sue afresh in respect of the same matter.

#### **148. STRANGER ABOUT TO LEAVE THE COUNTRY.**

If a person complains on oath to a Magistrate—

- (a) that he has a cause of action, whether it arose within or outside the country, which, if it arose in the country, would be cognizable by a Court against any other person for any debt or damages; and

- (b) that that person does not usually reside in the country and is about to leave it without paying the debt or satisfying the damages,

a Court may—

- (c) hear and determine the matter of the complaint in a summary way; and
- (d) make such order for the payment of—
  - (i) the debt or so much of the debt as appears to be due; or
  - (ii) a sum by way of damages,

as it thinks just.

#### **149. ONE OF SEVERAL PERSONS LIABLE MAY BE SUED.**

(1) Subject to Subsection (4), where a complainant has a demand recoverable under this Act against two or more persons jointly, it is sufficient if any one or more of those persons is served with process.

(2) An order may be made and enforced against a person served under Subsection (1) notwithstanding that others jointly liable have not been served or sued or are not in the country.

(3) A person against whom an order referred to in Subsection (2) has been made, and who has satisfied the order, has the same rights and remedies as if he had been sued in the National Court.

(4) The process and order referred to in this section do not prevent the complainant from afterwards proceeding in respect of the demand against the other person jointly liable in case the order is not satisfied, but the complainant shall not obtain in all more than the amount recovered by the order.

#### **150. PROCEEDINGS TO BE HEARD AT NEAREST COURT.**

On the hearing before a Court of a complaint, if the defendant objects that he is brought to the wrong Court and if, before any evidence is given in support of the complaint, he satisfies the Court that the complaint could more conveniently and more properly be heard before some other Court, the first-mentioned Court shall not proceed further with the hearing of the complaint but the Magistrates present, by memorandum signed by them or one of them, shall adjourn the complaint to the other Court, which shall hear and determine the complaint.

#### **151. COMPENSATION IN VEXATIOUS CASES.**

(1) Where an objection is established under Section 150 to the satisfaction of the Court and the person making the objection at once complains to the Court that he has been brought to the wrong Court vexatiously and oppressively, the Court shall immediately and without any further summons or notice proceed to hear and determine the matter in a summary way.

(2) If the Court is of opinion that a complaint under Subsection (1) is correct, it may order the original complainant to pay to the person making the objection, by way of compensation or amends, such reasonable sum as the Court directs, together with the costs of the order.

## 152. DETERMINATION OF COURT FINAL.

When a complaint or set-off for a civil debt or damages has been heard and determined by a Court, no action is maintainable in any other court in the country for the recovery of the debt or damages.

### *Division 2.*

#### *Set-off.*

## 153. SPECIAL DEFENCES TO BE NOTIFIED TO COMPLAINANT.

(1) Without the permission of the Court, the defendant in a complaint for a debt recoverable before a Court shall not—

- (a) set-off a debt or demand claimed or recoverable by him from the complainant; or
- (b) set up by way of defence and claim and have the benefit of illegality, infancy, coverture, or a Statue of Limitations or of his discharge under a law relating to bankrupt or insolvent debtors,

unless, a reasonable time before the hearing of the complaint, written notice of his intention to so set-off or to set up that defence, as the case may be, has been given to the complainant personally or by post or by causing it to be delivered at his usual or last-known place of abode or business or at his address for service set out in the summons on the complaint.

(2) The defendant shall produce on the hearing a copy of the notice given under Subsection (1), and, unless it is admitted, shall prove that it was given in accordance with that subsection, and in default of that proof no set-off or defence specified in that subsection shall be set up except by consent.

## 154. WHERE DEFENDANT'S SET-OFF EXCEEDS COMPLAINANT'S CLAIM.

(1) Subject to Subsection (2), in a complaint in which the defendant is allowed to set-off a debt or demand claimed or recoverable by him from the complainant, the defendant may recover in the complaint the amount (if any) by which the debt or demand so set-off exceeds the debt or demand claimed and proved by the complainant, and shall have an order for that amount.

(2) If a set-off referred to in Subsection (1) exceeds the amount in respect of which the Court has jurisdiction, and the Court is satisfied that the set-off is claimed *bona fide* and the defendant does not abandon the excess, no order shall be made on the complaint.

**Division 3.****Default Summons.****155. INTERPRETATION OF DIVISION 3.**

In this Division, “**default summons**” means a summons issued under Section 156.

**156. ISSUE OF DEFAULT SUMMONS.**

Notwithstanding anything in this Act, other than Section 21, on complaint made in respect of a debt or other liquidated demand in money payable by the defendant the Magistrate or Clerk before whom the complaint is made shall, instead of issuing a summons to the defendant in the ordinary form, if so required by the person making the complaint, and subject to this Division, issue a summons to the defendant under this Division.

**157. SERVICE OF DEFAULT SUMMONS.**

(1) A default summons shall be in the prescribed form and there shall be attached to the summons two notices of intention to defend in the prescribed form and it shall be served not less than six days before the day of return by delivering a true copy—

- (a) to the defendant personally; or
- (b) in the case of a company incorporated under the *Companies Act 1997*—to that company in accordance with the provisions of that Act; or
- (c) in the case of any other corporation—
  - (i) to the secretary, public officer or other chief officer of that corporation in the country; or
  - (ii) by sending it by post to the secretary, public officer or other chief officer at the last known address of that corporation in the country; or
  - (iii) in any other manner provided by law,

with true copies of the two notices of intention to defend in the prescribed form attached to it.

(2) A person who serves a default summons shall—

- (a) make an affidavit endorsed on the original summons, stating that a true copy of the summons with true copies of the two notices of intention to defend attached was personally served on the defendant and specifying the time at which it was served; and
- (b) immediately transmit the original summons to the Clerk for production at the time and place and before the Court specified in the summons.

(3) A document purporting to be an affidavit of service under Subsection (2) is *prima facie* evidence of the service of the summons and notices.

(4) If the defendant or his legal representative does not give notice of his intention to defend a complaint to which this Division applies by serving notice at least 48 hours before the time appointed for the return of the default summons on the Clerk at the place where the Court sits, and—

(a) personally or by post on the complainant at his address specified in the summons; or

(b) on his legal representative at his address if specified in the summons,

the complainant need not attend personally or otherwise or prove his claim, and an order in his favour may be made by the Court in his absence.

## 158. WHERE NO NOTICE GIVEN DEFENCE NOT ALLOWED EXCEPT BY PERMISSION OF COURT.

(1) If a defendant on whom a default summons is served under Section 157 does not give notice to defend within the time specified in that section, he shall not be allowed on the hearing of the complaint to make a defence to the claim except by permission of the Court and then only on such terms as to costs and otherwise as the Court determines.

(2) If permission to defend is given under Subsection (1), the hearing of the complaint—

(a) may be adjourned to some other day to be fixed by the Court—

(i) if the complainant or his legal representative desires; or

(ii) if the Court thinks fit; and

(b) shall be adjourned if the complainant or his legal representative is not present and the Clerk shall give written notice of the adjournment without delay to the complainant by post or otherwise.

## 159. COURT MAY SET ASIDE ORDER.

(1) Where an order is made under Section 157, the Court, whether consisting of the same Magistrate or not, at any time after the making of the order, on being satisfied by an affidavit or statutory declaration that the defendant has a good defence, may—

(a) set aside the order and reinstate the complaint and appoint a time and place for the hearing of the complaint; and

(b) where necessary—

(i) stay or set aside a warrant of execution on the order; or

(ii) give leave to defend on such terms as to costs or otherwise as to it seem just.

(2) Notice of an application to set aside an order made under Section 157—

- (a) shall be given by the defendant in writing to the complainant or his legal representative stating the time when, and the place where, the application is to be made; and
- (b) shall have attached a copy of the affidavit or statutory declaration in support of the application.

(3) The notice and the copy of the affidavit or declaration referred to in Subsection (2) shall be served—

- (a) on the complainant or his legal representative not less than 48 hours before the time when the application is to be made; and
- (b) in the manner prescribed for the service of notice of intention to defend a complaint in respect of which a default summons has been issued,

and the Court may entertain any answering affidavit or statutory declaration submitted to it by the complainant in reply.

**PART IX. – ENFORCEMENT OF DECISIONS.*****Division 1.******General.*****160. MINUTE OF DECISION TO BE MADE.**

(1) Where a Court convicts or makes an order against a defendant, a minute or memorandum of the conviction or order shall be made and signed by the Magistrate constituting the Court.

(2) A minute referred to in Subsection (1) does not form part of the warrant of commitment or of execution.

(3) A document purporting to be a copy of the minute or memorandum signed by the Clerk is *prima facie* evidence for all purposes of the making of the conviction or order.

**161. FORMAL CONVICTIONS AND ORDERS.**

(1) Subject to Subsection (2), a conviction or order, after the making of the minute or memorandum under Section 160, shall be drawn up, if required, by the Court in proper form, and the Court shall cause it to be lodged with the Clerk, to be filed by him among the records of the Court.

(2) Notwithstanding Subsection (1), a Court is not bound formally to draw up a conviction or order or any other record of a decision, unless it is demanded by a party to the proceedings for the purpose of an appeal against the decision or is required for the purpose of a return to a writ or order of the National Court.

**162. PROCEEDINGS IN CASE OF DISMISSAL.**

(1) If the Court dismisses an information, complaint or set-off, it shall make an order of dismissal and shall, on application, give to the defendant or complainant, as the case may be, a certificate of the order signed by one or more of the adjudicating Magistrates or the Clerk.

(2) A certificate under Subsection (1) is, on its production, without further proof, a bar to any other information, complaint or legal proceeding in any Court in the country (other than proceedings on appeal) for the same matter against the same party.

**163. CONVICTIONS NOT TO BE SET ASIDE FOR AMENDABLE ERRORS.**

A conviction, order or adjudication is not void or voidable, or liable to be quashed, annulled or set aside in any manner, by reason of a defect or error in form or substance, if it is shown to the satisfaction of the National Court that sufficient grounds were in proof before the District Court which made the conviction, order or adjudication to have authorized its drawing up free from the defect or error, and in

that case the National Court may, on such terms as to payment of costs as it thinks fit, amend the conviction, order or adjudication.

#### 164. COPIES OF PROCEEDINGS.

Where a conviction or order is made or an information or a complaint is dismissed by a Court, all interested parties are entitled on payment to the Clerk of the prescribed fee, to demand and have copies of the information or complaint, the depositions and the conviction or order.

#### 165. TIME FOR PAYMENT OR PAYMENT BY INSTALMENTS.

(1) Where, by a conviction or order, a fine or sum of money or costs is or are ordered to be paid, the Court may do all or any of the following things:—

- (a) allow time for the payment;
- (b) direct the payment to be made by instalments;
- (c) direct that the person liable to pay is at liberty to give security for the payment.

(2) Where a fine or sum of money or costs is or are directed to be paid by instalments, the instalments shall be paid to the Clerk or to such other person as the Court orders and, if default is made in the payment of an instalment, the same proceedings may be taken to recover the amount then remaining due as if an order for payment by instalments had not been made.

#### 166. TRANSFER OF JURISDICTION AS TO ENFORCEMENT OF FINES, ETC.

(1) Where a decision adjudges or requires the payment of a penalty or compensation or sum of money or costs and it appears that the person liable to make that payment does not reside at or near the place where the decision was made, the Clerk at that place, if he considers that an act or acts for the enforcement of the decision can more conveniently be performed at some other place appointed for holding court, may prepare and sign a certificate in duplicate (in this section referred to as a “**transfer of fine certificate**”) and transmit to the Clerk at that other place the certificate in duplicate, together with the minute or memorandum made under Section 160 and a copy of the minute or memorandum if a copy has not been served on the person liable to make the payment.

(2) Where it appears at any time to a Clerk to whom a transfer of fine certificate has been transmitted under Subsection (1) that any act or acts for the enforcement of the decision can more conveniently be performed at some other place appointed for holding court, the Clerk may prepare and sign a further transfer of fine certificate, in triplicate and without delay transmit—

- (a) the certificate and the duplicate of the certificate, together with the minute or memorandum under Section 160, and a copy of the minute or

memorandum if a copy has not been served on the person liable to make the payment, to the Clerk at the other place; and

- (b) the triplicate of the certificate to the Clerk at the place where the decision was made.

(3) A transfer of fine certificate shall include particulars of the minute or memorandum made under Section 160 and shall state the acts (if any) performed to enforce the decision and the amount still required to be paid in satisfaction of the decision, and when the certificate has been signed by the Clerk it is *prima facie* evidence of the facts stated.

(4) When a Clerk receives a transfer of fine certificate, he shall sign the memorandum of receipt endorsed on the duplicate certificate without delay and transmit it to the Clerk from whom he has received the certificate.

(5) As from the date of the transmission of a transfer of a fine certificate, all acts for the enforcement of the decision that, if the certificate had not been transmitted, could have been performed at some other place shall (unless a further transfer of fine certificate is signed and transmitted in accordance with this section) be performed at the place to which the certificate has been transmitted and not otherwise.

(6) A payment received by a Clerk by virtue of a transfer of fine certificate shall be transmitted without delay by him to, and shall be accounted for by, the Clerk at the place where the decision was made.

(7) If a copy of a minute or memorandum under Section 160, has not been served on the person liable to make the payment, the Clerk receiving the copy with a transfer of fine certificate (unless a further transfer of fine certificate is signed by him and transmitted in accordance with this section) shall cause—

- (a) the copy of the minute or memorandum; and
- (b) a notice advising that the payment is to be made to that Clerk instead of the Clerk at the place where the decision was made,

to be served on the person liable to make the payment.

(8) Where a decision is enforced under a transfer of fine certificate the Clerk at the place where the decision is enforced shall report the result of the enforcement to the Clerk at the place where the decision was made.

### ***Division 2.***

#### ***Warrants of Execution and Commitment.***

#### **167. IMPRISONMENT FOR NON-PAYMENT OF FINE, ETC.**

(1) Notwithstanding anything in any other law where a fine or costs is or are adjudged by a conviction to be paid, payment of the fine or costs, except where the conviction is made against a corporation, shall be enforced by imprisonment.

(2) Where, by a conviction, a corporation is adjudged to pay a fine or costs, the conviction operates as an order for payment of a sum of money or costs and is enforceable as prescribed by Section 173.

**168. COURT SHALL IMPOSE IMPRISONMENT IN DEFAULT OF FINE, ETC.**

(1) Except where the conviction is made against a corporation, where a Court by a conviction adjudges the payment of a fine or costs in and by its conviction, it shall impose a term of imprisonment in default of payment.

(2) If the law under which the conviction is made directs or appoints any manner or term of imprisonment, the conviction shall be framed accordingly.

(3) If the manner or term of imprisonment is not directed or appointed by the law under which the conviction is made, imprisonment may be imposed for any term which the Court thinks fit, not exceeding the time specified in Section 201 with reference to the amount to be recovered.

(4) Where a Magistrate is satisfied that default has been made in payment of a fine or costs, he may issue a warrant of commitment.

**169. PROOF OF DEFAULT.**

In or on application made to a Magistrate to issue a warrant of commitment to enforce the payment of a fine or costs adjudged by a conviction, a certificate, purporting to be signed by the Clerk of the Court that made the conviction, that the fine or costs or a portion of that fine or costs has not or have not been paid to him, is sufficient evidence of the facts stated, unless the Magistrate requires further evidence of the facts.

**170. WARRANT OF COMMITMENT TO ENFORCE PAYMENT OF FINE, ETC.**

A warrant of commitment to enforce the payment of a fine or costs adjudged by a conviction to be paid shall order the defendant to be imprisoned for such time as the conviction directs, unless the sum or sums adjudged to be paid are sooner paid.

**171. WARRANT OF COMMITMENT IN OTHER CASES.**

(1) Where—

- (a) a conviction does not adjudge the payment of a fine, but that the defendant be imprisoned for his offence; or
- (b) a Court orders the doing of an act other than the payment of a fine or sum of money or costs and directs that, in case of the defendant's neglect or refusal to do the act, he shall be imprisoned, and the defendant neglects or refuses to do the act,

the Court or a Magistrate may issue a warrant of commitment for the imprisonment of the defendant for such time as the conviction directs.

(2) If, by a conviction or order referred to in Subsection (1), costs are also adjudged to be paid by the defendant to the complainant, and the defendant does not pay the costs in accordance with the terms of the conviction or order, a Magistrate, by warrant, may commit the defendant to a correctional institution or police lock-up, there to be kept according to the terms of the conviction or order, unless he sooner pays the costs.

### **172. WARRANT APPLIED FOR MAY BE POSTPONED.**

A Court or Magistrate to which or to whom application is made to issue—

- (a) a warrant of execution for a sum ordered by a decision or order to be paid; or
- (b) a warrant of commitment for non-payment of a sum ordered by a conviction to be paid,

may, if it or he deems it expedient to do so, postpone the issue of the warrant until such time or on such conditions (if any) as to it or him seems or seem just.

### **173. ENFORCEMENT OF ORDER BY WARRANT OF EXECUTION.**

Where an order of a Court requires the payment of a sum of money or costs, the sum is recoverable, without the direction of the Court making the order, by execution against the goods and chattels of the person liable to make the payment, and a warrant of execution may be issued for the purpose of levying that sum.

### **174. PROCEDURE ON EXECUTION.**

(1) A warrant of execution issued by a Court or Magistrate shall be executed—

- (a) by or under the direction of a police officer or by or under the direction of some other officer named in the warrant; and
- (b) by a seizure and sale of the goods and chattels of the person against whom the warrant is issued.

(2) The wearing apparel and bedding of the defendant and his family, and the tools and implements of the defendant's trade, the whole not exceeding in value the sum of K200.00 shall not be taken under a warrant of execution.

(3) Except in so far as the person against whom the execution is issued otherwise consents in writing, the goods and chattels seized shall be sold by public auction and five days at least shall intervene between the making of the levy and the sale, of which due and public notice shall be given, except in the case of perishable goods which may be sold at the expiration of 24 hours after seizure, after such notice as is practicable.

(4) Where written consent is given under Subsection (3), the sale may be made in accordance with the consent.

(5) Subject to Subsection (4), the goods and chattels seized shall be sold within the period fixed by the warrant, and if no period is fixed then within the period of 14 days after the date of making the levy, unless the sum for which the warrant was issued, together with the charges of the execution, is sooner paid.

(6) Subject to any directions to the contrary given by the warrant of execution, where household goods are seized—

- (a) the goods, except with the written consent of the person against whom the execution is issued, shall not be removed from the house until the day of the sale; but
- (b) so much of the goods as, in the opinion of the person executing the warrant, is sufficient to satisfy the execution shall be impounded by affixing to the articles impounded a conspicuous mark.

(7) A person who removes any goods marked under Subsection (6), or defaces or removes the mark, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(8) A person charged with the execution of a warrant of execution who—

- (a) wilfully retains from the produce of goods sold to satisfy the execution, or otherwise exacts, greater costs and charges than those to which he is for the time being entitled by law; or
- (b) makes an improper charge,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(9) Where a person is convicted of an offence against Subsection (8), the Court which convicts him, in addition to any penalty imposed under that subsection, may order him to pay the sum retained, exacted or improperly charged, to the person entitled to it.

(10) A written account of the costs and charges incurred in respect of the execution of a warrant of execution shall be sent by the police officer or other person charged with the execution of the warrant, as soon as practicable, to the Clerk, and the person against whom the warrant was issued may, at the time of or within one month after the levy, inspect the account without fee or reward at any reasonable time and take a copy of it.

(11) The police officer or other person charged with the execution of a warrant of execution—

- (a) shall cause the goods and chattels seized under it to be sold; and
- (b) may deduct out of the amount realized by the sale all costs and charges actually incurred in effecting the sale; and
- (c) shall render to the owner the surplus (if any) after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant.

(12) Where a person pays or tenders to the police officer or other person charged with the execution of a warrant of execution the sum specified in the warrant, or produces the receipt of the Clerk for that sum, and also pays the amount of the costs and charges of the execution up to the time of the payment or tender, the officer or other person shall not execute the warrant.

(13) After the levying of the distress, a police officer or other person by whom a warrant of execution is executed may leave the house or place in which any goods on which he has levied then are, and at all reasonable times re-enter that house or place.

(14) A police officer or person leaving and subsequently returning to a house or place in accordance with Subsection (13) shall not be deemed to have abandoned the distress by doing so.

**175. MONEY, ETC., AND CHOSES IN ACTION MAY BE SEIZED, SUED ON AND SOLD.**

(1) Where this Act or any other Act or a warrant of a Magistrate directs a sum to be levied by execution against the goods and chattels of a person—

- (a) any money or bank notes belonging to that person may be seized, taken and applied towards satisfaction of the warrant but need not be sold; and
- (b) any cheques, bills of exchange, promissory notes, bonds, specialities or securities for money belonging to that person may be seized and taken and held as a security or securities for the amount directed to be levied, or so much of the amount as has not been otherwise levied or raised, for the benefit of the person on whose behalf the warrant has issued.

(2) When the time of payment of a cheque or other instrument referred to in Subsection (1) has arrived, the person on whose behalf the warrant has issued may—

- (a) demand and receive payment; and
- (b) sue in any proper Court in the name of the person—
  - (i) against whom the warrant has issued; or
  - (ii) in whose name the person against whom the warrant has issued might have sued,

for the recovery of the sum or sums secured or made payable by the cheque or instrument.

**176. TO WHOM PAYMENTS TO BE MADE.**

(1) A warrant of execution shall order the police officer or other person to whom it is directed to pay the amount of the sum to be levied under the warrant to the Clerk of the Court by which the order was made.

(2) If a defendant who has been adjudged by a conviction to pay a fine or costs pays the fine or costs to a police officer or other person, the officer or other person shall pay the fine or costs to the Clerk of the Court by which the conviction was made without delay.

### 177. APPLICATION OF MONEY PAID UNDER A CONVICTION.

On receipt of a sum of money adjudged to be paid by a conviction, or of part of the sum, the Clerk shall pay it without delay—

- (a) firstly—in or towards satisfaction of costs ordered by the Court to be paid to a party; and
- (b) secondly—in accordance with the terms (if any) of the conviction; and
- (c) lastly—in accordance with the directions of the law under which the information was laid, or, if that law contains no direction for the payment to a person, then to the Secretary for Finance.

#### *Division 3.*

#### *Adverse Claims.*

### 178. ADVERSE CLAIMS TO GOODS SEIZED.

(1) If a claim is made to or in respect of any goods or chattels distrained under a warrant of execution, or in respect of the proceeds or value of the goods, by a person (not being a party against whom the warrant has issued), a Magistrate, on application by the police officer or other person charged with the execution of the warrant, may issue a summons directed to the party obtaining the warrant and the party making the claim.

(2) On the issue of a summons under Subsection (1), an action brought in respect of the claim shall, by the mere fact of service of the summons on the plaintiff in that action, be stayed and the Court in which the action has been brought may, on proof of the service and that the goods and chattels were so distrained, order the party bringing the action to pay the costs of all proceedings had in the action after the service.

(3) A Court may adjudicate in the claim and make an order on the claim.

(4) Subject to an appeal under this Act, an order made under Subsection (3) is final and conclusive on all parties.

### 179. RULES IN INTERPLEADER SUMMONS.

The following rules shall be observed with regard to claims made under Section 178:—

- (a) subject to Paragraph (d), the claimant shall, within 24 hours after making his claim, deliver to the person charged with the execution of the warrant of execution, or leave at the office of the Clerk, particulars—

- (i) of any goods and chattels alleged to be the property of the claimant and the grounds of his claim; or
- (ii) in the case of a claim for rent—of the demand for the rent, and for what period and in respect of what premises the rent is claimed to be due;
- (b) the name, address and description of the claimant shall be fully set out in the particulars under Paragraph (a);
- (c) any money or bank notes paid to the Clerk under the execution shall be retained by the Clerk until the claim has been adjudicated on;
- (d) by leave of the Court, the particulars, at any stage of the case, may be amended or, by consent, may be altogether dispensed with;
- (e) the summons may be made returnable on any day fixed by the Magistrate issuing it and shall be served, in the same manner as an ordinary summons on a complaint, not less than 48 hours before the time appointed in the summons for the hearing, but by written consent endorsed on the summons it may be made returnable as soon as it can be heard, and service may be dispensed with by a similar consent;
- (f) where a claim to goods or chattels taken in execution, or the proceeds or value of the goods and chattels is decided against the claimant, the costs of the person charged with the execution of the warrant of execution allowed by the Court shall be retained by him or the Clerk on his behalf out of the amount levied unless the Court otherwise orders, but without prejudice to the right of the execution creditor against the claimant for the sum retained, if the Court orders the sum to be paid by the claimant to the execution creditor.

***Division 4.***

***Attachment of Debts.***

**180. INTERPRETATION OF DIVISION 4.**

In this Division—

“**the debtor**” means the person liable under an order of a Court for the recovery or payment of money or costs, or both;

“**the garnishee**” means a person from whom debts are owing or accruing to the debtor, and in respect of whom an order is made under Section 182(1).

**181. ORAL EXAMINATION OF DEBTOR.**

(1) Where an order of a Court has been made for the recovery or payment of money with or without costs, or for costs alone including costs ordered to be paid by an informant, the party entitled to enforce it may, on summons, apply to a Court or Magistrate for an order that—

- (a) the debtor; or
- (b) in the case of a corporation—an officer of the corporation, be orally examined as to—
  - (c) whether any and what debts are owing to the debtor; and
  - (d) whether the debtor has any and what other property or means of satisfying the order.
- (2) A summons, under Subsection (1), may be issued by a Magistrate or Clerk.
- (3) The debtor or officer shall be examined on oath, and any person may be summoned to give evidence or produce documents and may be examined on oath as in any case of summary jurisdiction.

## 182. ORDER NISI FOR ATTACHMENT OF DEBT.

- (1) A Court or Magistrate—
  - (a) on the *ex parte* application of a person who has obtained an order for the recovery or payment of money or costs; and
  - (b) on proof by affidavit or otherwise that an order has been made and it is still unsatisfied and to what amount; and
  - (c) that another person is indebted to the debtor and is in the country, may order that all debts owing or accruing from that person to the debtor be attached to answer the order.
- (2) In an order under Subsection (1) or by a subsequent order, the Court or Magistrate may order that the garnishee appear before the Court named in the order to show cause why he should not pay, to the person who has obtained the order for the recovery or payment of money or costs, the debt due from him to the debtor, or so much of the debt as is sufficient to satisfy the last-mentioned order.
- (3) On an application under this section, the Court or Magistrate may refuse to make an order where from the smallness of the amount to be recovered or of the debt sought to be attached or otherwise, the remedy sought would in its or his opinion be worthless or vexatious.

## 183. SERVICE OF ORDER NISI TO BIND DEBTS.

- (1) Service of a true copy of an order under Section 182, or notice of the order on the garnishee in such manner as the Court directs, binds the debts in his hands.
- (2) Subject to Subsection (3), in the absence of a direction by the Court, service of an order under Section 182 shall be personal or may be made by leaving a true copy of the order with a person, apparently an inmate and apparently not less than 16 years of age, at the usual or last-known place of abode or of business of the garnishee.

(3) A place of business shall not be deemed to be the place of business of the garnishee for the purposes of Subsection (2) unless he is the master or one of the masters of that place of business.

**184. WHERE GARNISHEE DOES NOT DISPUTE DEBT.**

If the garnishee does not—

- (a) promptly pay to the Clerk the amount due from him to the debtor or an amount equal to the order and does not dispute the debt due or claimed to be due; or
- (b) appear on the order directing him to appear,

the Court may order a warrant of execution to issue and it may issue accordingly without any previous writ or process, to levy the amount due from the garnishee or so much of the amount as is sufficient to satisfy the order.

**185. WHERE GARNISHEE DISPUTES DEBT.**

(1) If the garnishee disputes his liability, the Court, instead of making an order under Section 184, may make an order that an issue or question necessary for determining his liability be tried and determined between the person who has obtained the order for the recovery or payment of money or costs and the garnishee, in any manner and in any court in which the issue or question might be tried or determined if a complaint were laid or an action commenced in respect of the liability by the debtor against the garnishee.

(2) The court in which the issue or question referred to in Subsection (1) is to be tried or determined shall be specified in the order under that subsection.

**186. ISSUE MAY BE FILED.**

The party obtaining an order under Section 185 for the trial or determination of an issue or question, within the time fixed by the order or such further time as the Court making the order allows, may file it in the court specified in the order, and the issue or question shall be then tried and determined in that last-mentioned court, and the judgement, order or other determination may be enforced and all subsequent proceedings taken as nearly as possible according to the usual practice of that court.

**187. WHERE THIRD PARTY CLAIMS LIEN OR CHARGE ON DEBT.**

Where, in proceedings to obtain an attachment of debt, it is suggested by the garnishee that the debt sought to be attached belongs to a third party, or that a third person has a lien or charge on it, the Court may order the third person to appear and state the nature and particulars of his claim (if any) on the debt.

**188. COURT MAY ORDER WARRANT TO LEVY AMOUNT, ETC.**

After hearing the allegations of a third person under an order made under Section 187 and of any other person whom the Court orders to appear, or if the third person or other person does not appear as ordered, the Court may—

- (a) order a warrant of execution to issue to levy the amount due from the garnishee; and
- (b) order an issue or question to be tried and determined; and
- (c) order the determination to be enforced and subsequent proceedings to be taken in accordance with Section 186; and
- (d) bar the claim (if any) of the third or other person to an extent not greater than the amount due from the garnishee to the debtor; and
- (e) make any such order on such terms, in all cases, with respect to the lien or charge (if any) of the third or other person and to costs as the Court thinks just and reasonable.

**189. PAYMENT BY DEBTOR TO BE VALID DISCHARGE.**

Payment made by, or a warrant of execution levied on, the garnishee under a proceeding under this Division is a valid discharge to him as against the debtor for the amount paid or levied, whether or not the proceedings are set aside or the order reversed.

**190. DEBT ATTACHMENT BOOK.**

(1) The Clerk shall keep a book to be known as the Debt Attachment Book in which he shall enter all attachments made under this Division specifying the names, dates and statements of the amounts recovered and otherwise.

(2) On application to the Clerk, a person may take copies of entries in the Debt Attachment Book.

**191. COSTS OF ATTACHMENT.**

The costs of an application for an attachment of debts and of proceedings arising from or incidental to the application are in the discretion of the Court determining the application, and the costs of the party who has obtained the order for the recovery or payment of money or costs referred to in Section 181 unless otherwise directed, shall be retained out of the money recovered by him under the order under this Division and in priority to the amount due under the first-mentioned order.

***Division 5.******Imprisonment of Fraudulent Debtors.*****192. IMPRISONMENT OF DEFENDANTS IN CIVIL CASES.**

(1) An order made by a Court—

(a) for the payment of—

- (i) a debt recoverable before it; or
- (ii) an instalment of the debt,

whether with or without costs; or

(b) for the payment of—

- (i) damages for an assault or for trespass by cattle; or

- (ii) an instalment of those damages; or

- (iii) damages recoverable before it and not enforceable as a fine or an instalment of a fine,

whether with or without costs; or

(c) for costs ordered to be paid by an informant to a defendant on the dismissal of an information, or an instalment of those costs; or

(d) for the delivery of goods detained without just cause after due notice and, in the event of neglect or refusal to deliver up the goods according to the order, for the payment of the value of the goods to the party aggrieved,

shall not, in default of distress or otherwise, be enforced by imprisonment—

(e) unless it is proved to the satisfaction of the Court that the person making default in payment—

- (i) has then, or has had since the date of the order, sufficient means and ability to pay the sum of which he has made default, or an instalment of that sum where an order has been made to pay by instalments, and has refused or neglected or refuses or neglects to make that payment; or

- (ii) is about to leave the country without paying the debts, damages, costs, money or instalment, or so much of them as is still unsatisfied; or

- (iii) is about to depart elsewhere within the country with intent to evade payment; or

- (iv) has neglected or refused to comply with an order under this Act for the delivery of goods detained without just cause after due notice, and has not paid the value of the goods to the party aggrieved; or

(f) unless it is proved to the satisfaction of the Court that the person, if a defendant incurring the liability which is the subject of the proceedings in which the order was made—

- (i) obtained credit or contracted the liability under false pretences or by means of fraud or breach of trust; or
- (ii) wilfully contracted the liability without having at the same time a reasonable expectation of being able to discharge it; or
- (iii) has made or caused to be made a gift, delivery or transfer of property or has charged, removed or concealed property with intent to defraud his creditors or any of them.

(2) Proof of a matter referred to in Subsection (1) may be given in such manner as the Court to which application is made for the commitment thinks just, and for the purposes of that proof—

- (a) the person making default may be—
  - (i) personally served with a summons, in the prescribed form; and
  - (ii) examined on oath on the return of the summons as to any of the matters specified in that subsection and set out in the summons; and
- (b) any witnesses, including the person making default, may be summoned and examined on oath according to the provisions relating to the summoning and examination of witnesses in cases of summary jurisdiction.

(3) Subject to Subsection (4), if any of the matters specified in Subsection (1) are proved to the satisfaction of the Court, the Court may make an order in the prescribed form that, unless the person making default immediately or within the time limited in the order, pays to the Clerk the money so unsatisfied together with such costs of and occasioned by the summons and examination as are directed by the order, in one sum or by such instalments as the Court orders, he shall be committed to a correctional institution or police lock-up for a period not exceeding two months.

(4) An order for commitment under Subsection (3) shall not be made against a person against whom, since the order under which the money was recoverable was made, adjudication of insolvency has been made.

### 193. IMPRISONMENT OF A PERSON LEAVING THE COUNTRY.

(1) Notwithstanding anything in this Act, a Court shall not issue an order under Section 192 to commit a debtor or other person about to leave the country for a destination in Australia unless the Court is satisfied that he is able to earn sufficient remuneration in the country to maintain himself, his wife and family and is possessed of means exceeding the value of K50.00 in addition to—

- (a) his fare, or the amount of his fare, and the value of his clothing; and

- (b) the fares, or the amount of the fares, and the value of the clothing of his wife, if she is about to leave the country with him, and any other members of his family who are about to leave with him; and
- (c) means to the value of K50.00 each in respect of his wife, if she is about to leave with him, and any other members of his family who are about to leave with him.

(2) For the purposes of this Division, the onus of proving to the satisfaction of the Court that a debtor or other person is not possessed of means exceeding the value of K50.00 in addition to the things specified in Subsection (1)(a), (b) and (c) is on the debtor or other person.

(3) Before deciding whether to issue an order under Section 192, a Court, by written order addressed to a police officer, may order the debtor or other person to be brought before it without delay.

(4) Where, under an order under Subsection (3), a debtor or other person appears or is brought before a Court—

- (a) the Court may proceed to examine him on oath or otherwise in the same manner as if he were a person who had appeared under a summons and was being examined under Section 192(2); and
- (b) he is subject to the same obligation to undergo examination by the Court as that to which he would be subject if he were a person appearing in Court under a summons and undergoing examination under that subsection.

#### **194. WARRANT IN DEFAULT OF COMPLIANCE.**

Where an order for commitment has been made under Section 192 and the money and costs or an instalment of the money or costs specified in that order has not or have not been paid, the Clerk, without any previous notice or summons to the party required to make the payment, shall issue a warrant in the prescribed form, and the person to whom the warrant is directed shall execute and obey the warrant, and all members of the Police Force shall aid and assist in the execution of the warrant.

#### **195. EX PARTE ORDER FOR COMMITMENT.**

(1) An order for commitment under this Division, if the special circumstances of the case appear to the Court to warrant it, may be made by the Court *ex parte* and without notice, on proof by affidavit or otherwise of any of the matters specified in Section 192.

(2) An order made under Subsection (1), under the hands of the Magistrate constituting the Court or of any one of them, may be filed in the Court, and the person against whom the order is made may be dealt with, as if an order for commitment had been made under Section 192, and the warrant to be issued by the Clerk shall be in the prescribed form.

**196. DISCHARGE OF DEBTOR.**

(1) A person imprisoned under a warrant under this Division who pays or satisfies the sum specified in the order for commitment shall be discharged out of custody on a certificate of the payment or satisfaction signed by the Clerk.

(2) Notwithstanding anything in this Division, a Court at any time by order under the hand of a Magistrate, if under the special circumstances of the case it thinks fit to do so, may direct that a person in custody under an order made under this Division shall be discharged immediately.

**197. EXAMINATION TO BE TAKEN DOWN IN WRITING.**

The examination under this Division of a person in default and of all other witnesses examined in the matter shall be taken down in writing, and a copy of the examination may be used on the hearing of an appeal from an order for commitment.

**198. EXAMINATION A JUDICIAL PROCEEDING.**

The examination of a person under this Division shall be deemed to be a judicial proceeding.

**199. IMPRISONMENT NO SATISFACTION FOR DEBT.**

Imprisonment under this Division does not operate as a satisfaction or discharge of the amount due on an order but, notwithstanding the imprisonment, a fresh warrant against the property or other proceedings to recover the amount due may be issued on the order and executed in due course of law.

*Division 6.**Miscellaneous.***199A. COMMUNITY WORK ORDERS.**

(1) Where, under any law a Court may, after conviction, impose a fine or imprisonment for an offence, it may, as well as imposing a fine, or instead of imposing a fine or imprisonment, order the defendant to perform specified work for community purposes of a kind and in a manner approved by the Minister by notice in the National Gazette.

(2) Where a Court makes an order under Subsection (1), the work ordered to be performed shall not exceed—

- (a) eight hours in any one day; and
- (b) six days in any one week,

over a period not exceeding three months.

(3) Where a person fails to comply with an order under Subsection (1), the Court may order the person to be imprisoned for a term not exceeding two days for every day on which he fails to comply with the order.

(4) An order under Subsection (1) may include an anticipatory order under Subsection (3).

## 200. MITIGATION OF PAYMENT BY COURT.

<sup>59</sup>(1) Where imprisonment or a fine may be imposed by a Court under any law and there is prescribed by that law a requirement for the defendant to enter into his recognizance and to find securities for keeping the peace, or being of good behaviour, and observing some other condition, or to do any of those things, the Court may dispense with any such requirement wholly or in part.

(2) Subject to Subsection (3), where a Court, under any law, may impose a penalty for an offence punishable on summary conviction but has no power to impose a fine for that offence, it may impose a fine not exceeding K200.00, but not being such an amount as would subject the offender, in default of payment of the fine, to a term of imprisonment longer than that to which he is liable under the first-mentioned law, if it considers that the justice of the case would be met better by a fine than by imprisonment.

(3) Subsection (2) does not apply in the case of an offence for which a minimum sentence of imprisonment is prescribed.

## 201. SCALE OF IMPRISONMENT FOR NON-PAYMENT OF MONEY.

<sup>60</sup>(1) Where—

(a) under this Act or any other law, the payment of—

- (i) a fine; or
- (ii) costs,

adjudged to be paid by a conviction, is authorized to be enforced by imprisonment; and

(b) a term of imprisonment is not prescribed by the law authorizing the making of the conviction,

the imprisonment shall be for such period, not exceeding the maximum specified in Subsection (2), as the Court thinks fit.

(2) Imprisonment imposed under Subsection (1) shall not exceed the maximum period fixed by the following scale:—

where the sum adjudged to be paid, including costs—	The period shall not exceed—
Does not exceed K50.00	14 days
Exceeds K50.00 but does not exceed K200.00	28 days

<sup>59</sup> Section 200 amended by No. 34 of 1983, s2.

<sup>60</sup> Section 201 repealed and replaced by the *District Courts (Amendment) Act 1986* (No. 9 of 1986), s1.

Exceeds K200.00	60 days.
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**202. REDUCTION OF IMPRISONMENT ON PART PAYMENT.**

(1) Where a conviction adjudges the payment of a fine or costs and a term of imprisonment is imposed on the defendant in default of payment, the term of imprisonment imposed on payment or satisfaction of part of the fine or costs, shall be reduced by a number of days bearing, as nearly as possible, the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid.

(2) Payment under this section may be made to—

- (a) the Clerk; or
- (b) the officer-in-charge of the correctional institution or police lock-up in which the defendant is detained.

(3) Where a warrant of commitment has been issued against a defendant in respect of the non-payment of a fine or costs and payment is made of part of the fine or costs to the Clerk, the Clerk shall give to the person making the payment a certificate of the payment under his hand.

(4) On receipt of a certificate under Subsection (3), or of a sum paid under this section, the officer-in-charge of the correctional institution or police lock-up in which the defendant is detained under the warrant of commitment shall endorse a memorandum of the payment and of the reduction effected by the payment on the warrant, which shall then be deemed to have been amended accordingly.

**203. DISCHARGE ON PAYMENT IN FULL.**

(1) Subject to Section 204, where a defendant is detained under a warrant of commitment for non-payment of a fine or other sum, he may pay or cause to be paid to the officer-in-charge of the correctional institution or police lock-up in which he is detained the sum specified in the warrant of commitment, and the officer shall receive the sum and discharge the defendant if he is in his custody for no other matter.

(2) All sums received by the officer-in-charge of a correctional institution or police lock-up under a warrant of commitment shall be paid immediately to the Clerk of the nearest or most convenient Court, who shall immediately notify the Clerk of the Court by which the conviction was made.

**204. REDUCTION OF AMOUNT DUE.**

Where a defendant is detained under a warrant of commitment for non-payment of a fine or other sum, and the fine or other sum is subsequently paid or levied by due process of law, the amount of the fine or other sum shall be deemed to have been reduced in proportion to the amount of imprisonment served.

## 205. ACCOUNTS TO BE KEPT.

A Clerk or an officer-in-charge of a correctional institution or police lock-up shall keep a true and exact account of all money received by him under or by virtue of a conviction or order, showing the persons from whom and the time when the sums were received and the persons to whom and the time when the sums were paid.

## 205A. COMMUNITY WORK ORDERS.

<sup>61</sup>(1) Where, under any law in force in the country, a District Court may, after conviction, impose a fine or imprisonment for an offence, it may, as well as imposing a fine, or instead of imposing a fine or imprisonment, order the defendant to perform specified work for community purposes of a kind and in a manner approved by the Minister by notice published in the National Gazette.

(2) Where a court makes an order under Subsection (1), the work ordered to be performed shall not exceed—

- (a) eight hours in any one day; or
- (b) six days in any one week,

over a period not exceeding three months.

(3) Where a person fails to comply with an order under Subsection (1), the court may order the person to be imprisoned for a term not exceeding two days for every day on which he fails to comply with the order.

(4) An order under Subsection (1) may include an anticipatory order under Subsection (3).

## 205B. RESTRICTION OF MOVEMENT.

<sup>62</sup>(1) Notwithstanding that restriction of movement is not specified as a punishment for an offence, a District Court may, in addition to any other punishment or punishments imposed, also impose restriction of movement in accordance with this section.

(2) When a District Court is considering the punishment or punishments to be imposed in any case it shall also consider whether, in the circumstances of the case, restriction of movement is an appropriate punishment.

(3) Where a person is convicted of an offence, the District Court that convicts him may, in addition to or instead of any other punishment that may be imposed, order him—

- (a) not to come or be within such part of the country as the District Court specifies; or
- (b) to be returned to his home, as specified by the District Court,

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<sup>61</sup> Section 205A inserted by No. 11 of 1979.

<sup>62</sup> Section 205B added by the *District Courts (Restriction of Movement) Act 1986* (No. 20 of 1986).

during such period, not exceeding five years, as is specified by the court.

(4) An order under Subsection (3)–

- (a) may be made subject to such exceptions and conditions as to the District Court seem proper, including a condition requiring the person to report his presence at regular intervals to a District Officer or Probation Officer or member of the Police Force; and
- (b) remains in force for such period as is specified.

(5) An order made under Subsection (3)(b) does not operate so as to hinder or prevent a person from leaving the country.

(6) A person who, without reasonable excuse (proof of which is on him), contravenes or fails to comply with an order made under Subsection (3) is guilty of an offence.

Penalty: Imprisonment for a term not exceeding six months.

(7) A person who is convicted of an offence against Subsection (6) is liable to be again removed from the part of the country specified in the order, or to be removed to the part of the country specified by the District Court, as the case may be, or a new order under this section may be made against him.

(8) For the purposes of this section–

“**home**”, in relation to a person, means–

- (a) the place (if any) where he has resided continuously during the period of five years immediately preceding the date of the offence giving rise to the conviction in respect of which a punishment under this section is being imposed; or
- (b) an area of customary land on which he may by custom build or occupy a house or garden, whether in his own right or in right of his spouse or some other relation; or
- (c) an area of customary land owned by a linguistic or cultural group with which he or his spouse has customary affiliations involving usage rights in land; or
- (d) an area of land leased for a term of not less than 12 months or held in freehold by him or his spouse under a law in force in the country; or
- (e) in a particular case where the provisions of Paragraph (a), (b), (c) or (d) are inapplicable–any other place with which he or his spouse has connections such that it should, in the opinion of the court, be reasonably regarded as his home;

“**Probation Officer**” means a probation officer appointed under the *Probation Act 1979*.

**206. FORFEITED GOODS MAY BE SOLD.**

Subject to this Act and to any other Act, all non-pecuniary forfeitures incurred in respect of an offence triable by a Court, or which may be enforced by a Court, may be sold or disposed of or dealt with in such manner as the Court directs, and the proceeds of the sale shall be applied in the same manner as if the proceeds were a fine imposed under the Act on which the proceeding for the forfeiture is founded.

**207. WARRANT OF COMMITMENT, ETC., NOT VOID FOR WANT OF FORM ONLY.**

A warrant of commitment or of execution shall not be held void by reason only of a defect or error in the warrant if there is a conviction or order to sustain it which is good and valid, or which may be amended and made good and valid, under this Act.

**208. CONVICTIONS, ETC., TO BE TRANSMITTED TO REGISTRAR OF NATIONAL COURT.**

A District Court before which a person is convicted, or an information is dismissed in respect of an indictable offence which may be dealt with by a Court in a summary manner, shall immediately transmit the conviction and recognizances or a copy of the certificate of dismissal (if any), as the case may be, to the Registrar of the National Court, to be kept by him among the records of the National Court, and the District Court shall cause all such decisions to be registered in a book to be kept for the purpose.

## PART X. – SURETY OF THE PEACE AND GOOD BEHAVIOUR.

### 209. INFORMATION PRAYING FOR SURETY OF THE PEACE.

Where a written information is laid before a Magistrate that a person has—

(a) threatened—

- (i) to do to the complainant or to his wife or child, or a person under his care or charge, bodily injury; or
- (ii) to burn or injure his house; or
- (iii) to commit a breach of the peace towards him or his wife or child or that other person,

or to procure others to commit any such injury; or

(b) used language indicating an intention to commit any such breach of the peace or to do any such injury or procure it to be committed or done,

and that the complainant is in fear of the defendant, and the complainant prays that the defendant may be required to find sufficient sureties to keep the peace, proceedings may be had under this Part.

### 210. INFORMATION PRAYING FOR SURETY TO BE OF GOOD BEHAVIOUR.

Where a written information on oath is laid before a Magistrate that a person is a person of evil fame, and the complainant prays that the defendant may be required to find sufficient sureties to be of good behaviour, proceedings may be had under this Part.

### 211. EVIDENCE IN SUPPORT.

On the laying of information under Section 209 or 210, the Magistrate may receive corroborating affidavits of third persons in support of the matters stated in the information.

### 212. WARRANT.

(1) Subject Subsection (2), on the laying of an information under Section 209 or 210, the Magistrate may—

- (a) issue the same process to procure the attendance before a Court of the person against whom the information is laid as is specified by this Act in the case of persons charged with simple offences; and
- (b) if the information is laid on oath—issue a warrant in the first instance.

(2) If a Magistrate is satisfied that an information referred to in Subsection (1) is laid from malice or for vexation only, he may refuse to issue process.

**213. PROCEEDINGS ON APPEARANCE OF DEFENDANT.**

Subject to this Part, where a person appears or is brought before a Court under this Part the procedure and the powers of the Court are the same, and the provisions of this Act, with the necessary modifications, apply as on an information of a simple offence.

**214. CASE TO BE DISMISSED, OR SURETY OF THE PEACE, ETC., REQUIRED.**

After hearing the evidence relating to an information under Section 209 or 210, the Court may—

- (a) dismiss the case; or
- (b) require the defendant immediately, or at some time to be specified by the Court, to enter into a recognizance, oral or in writing, with or without sureties, in such reasonable amount as the Court thinks fit, to keep the peace or be of good behaviour, as the case may be, for such time as it thinks fit, or in default—commit the defendant to a correctional institution or police lock-up for such time as the Court thinks fit, not exceeding six months, unless in the meantime the required recognizance is given.

**215. NOTICE OF RECOGNIZANCES.**

Notice of a recognizance under Section 214 shall be given to the parties bound in the same manner as of other recognizances under this Act.

**216. DISCHARGE.**

If the defendant is in custody under commitment for want of sureties at the time when he enters into a recognizance under Section 214, the Magistrate taking the recognizance shall issue to the officer-in-charge of the correctional institution or police lock-up in which the defendant is held a warrant to release him.

**217. FORFEITING RECOGNIZANCE.**

Where a recognizance to keep the peace or to be of good behaviour is entered into by a person as principal or surety, a Court,—

- (a) on application made to it to declare the recognizance to be forfeited; and
- (b) on proof of a conviction of the principal bound by the recognizance of an offence which is in law a breach of the condition of the recognizance; and
- (c) on proof that written notice signed by the person seeking to put the recognizance in force has, at least seven days before the date of making the application, been personally served on or left at the usual or last-known place of abode of the person bound by the recognizance, or each

of those persons if more than one, that an application will then and there be made that the recognizance be declared forfeited, may declare the recognizance forfeited, and may make an order for payment of any amount due under the recognizance.

**218. COSTS.**

Costs may be awarded on proceedings under this Part in the same manner and to the same extent, and are recoverable by the same process, as on an information of a simple offence.

## PART XI. – APPEALS FROM DECISIONS OF DISTRICT COURTS.

### 219. APPEAL TO NATIONAL COURT.

(1) Subject to Subsections (2) and (3), a person aggrieved by a conviction order or adjudication of a Court, including an adjudication or order dismissing an information or complaint, may appeal to the National Court from the conviction, order or adjudication, in accordance with this Part.

(2) Except as provided in Subsection (3), Subsection (1) shall not be deemed to authorize an appeal by the State against the dismissal of an information.

(3) Where, in the opinion of the National Court, the matter is one of such public importance that leave should be granted, the Attorney-General may—

- (a) appeal against a decision of a District Court on behalf of a party; or
- (b) intervene in an appeal to the National Court.

(4)<sup>63</sup> <sup>64</sup>The Public Prosecutor may appeal to the National Court against any decision of the District Court as to sentence in respect of any indictable offence triable summarily under Section 420 of the *Criminal Code 1974*.

### 220. INSTITUTION OF APPEAL.

- (1) An appeal under Section 219 shall be instituted—
  - (a) by notice of appeal; and
  - (b) by entering into a recognizance on appeal, or by giving other security as specified in Section 222.

(2) An appellant shall give notice of his intention to appeal by lodging, within one month after the day when the decision is pronounced, a notice of appeal with the Clerk of the Court by which the conviction, order or adjudication was made.

### 221. NOTICE OF APPEAL.

(1) A notice of appeal under Section 220 shall be in writing, and shall state the nature of the grounds of appeal.

(2) Within one month after the day on which the decision was pronounced, a copy of the notice of appeal shall be served by or on behalf of the appellant on—

- (a) the respondent, or on each of the respondents if more than one; and
  - (b) the Registrar of the National Court.

<sup>63</sup> Section 219(4) added by No. 32 of 1980, s17.

<sup>64</sup> Section 219(4) added by No. 32 of 1980, s17.

**222. RECOGNIZANCE ON APPEAL.**

(1) Subject to Subsection (2), within one month after the day when the decision is pronounced an appellant shall enter into a recognizance with a surety before a Magistrate in such sum as the Magistrate thinks fit, conditioned—

- (a) to prosecute the appeal; and
- (b) to abide the order of the National Court on the appeal; and
- (c) to pay such costs as are awarded by the National Court,

or the appellant may, instead of entering into a recognizance, deposit with the Clerk of the Court by which the conviction, order or adjudication was made such sums of money as a Magistrate in writing directs.

(2) A recognizance under Subsection (1) shall be forwarded without delay by or on behalf of the appellant to the Clerk of the Court by which the conviction, order or adjudication was made.

(3) This section does not apply to the State or the Attorney-General, or to a person acting on behalf of the State or the Attorney-General.

**223. RELEASE OF APPELLANT FROM CUSTODY.**

Where an appellant is in custody and is not detained for any other cause, a Magistrate, on the certificate of the Clerk of the Court by which the conviction, order or adjudication was made that a copy of the notice of appeal has been served on him and that the appellant has entered into a recognizance or deposited a sum of money in accordance with Section 222, may, by written order, release the appellant from custody.

**224. DEPOSITION, ETC., TO BE FORWARDED TO REGISTRAR OF NATIONAL COURT.**

(1) The Clerk of the Court the decision of which is appealed against, immediately after notice of appeal is lodged with him, shall forward to the Registrar of the National Court a copy, certified by him to be a true copy—

- (a) of the conviction, order or adjudication; and
- (b) of the reasons given by the Court for the making of the conviction, order or adjudication, if any reasons were given at the time when the decision was pronounced; and
- (c) of the complaint; and
- (d) of the depositions; and
- (e) of all other proceedings before the Court relating to the conviction order or adjudication,

together, subject to Subsection (2), with the original exhibits (if any) relating to the conviction, order or adjudication.

(2) Where, in the opinion of the Clerk, it is impracticable to forward the exhibits required under Subsection (1), the Clerk may forward to the Registrar of the National Court, instead of the exhibits, a list and description of those exhibits.

**225. REPORT BY MAGISTRATE.**

(1) Where no reasons were given by the Court for the making of the conviction, order or adjudication, the Clerk of the Court the decision of which is appealed against, immediately after the notice of appeal is lodged with him, shall notify the Magistrate who constituted the Court by which the conviction, order or adjudication was made, of the notice of appeal.

(2) Immediately after being notified of a notice of appeal under Subsection (1), the Magistrate shall forward to the Registrar of the National Court a written report setting out the reasons for the making of the conviction, order or adjudication.

**226. APPELLANT TO SET DOWN APPEAL AND GIVE NOTICE.**

(1) Within 40 days after the institution of an appeal, the appellant shall enter the appeal for hearing on a date to be fixed by the Registrar of the National Court.

(2) An entry shall be made by delivering to the Registrar of the National Court a memorandum in the prescribed form, signed by the appellant or by his lawyer and containing the prescribed particulars.

**227. FAILURE TO ENTER APPEAL FOR HEARING.**

If, within 40 days after the institution of an appeal, the appellant does not enter the appeal for hearing, a Court or Magistrate has the same authority to enforce the conviction, order or adjudication as if it had not been appealed against.

**228. NOTICE OF HEARING.**

(1) Notice of the hearing of an appeal shall be given by the Registrar of the National Court to the respondent and to each of the respondents if more than one and to the Clerk of the Court the decision of which is appealed against, not less than seven days before the day fixed for the hearing of the appeal.

(2) Notwithstanding anything in Section 238(1), the Registrar of the National Court may in any case give notice by telegram of the hearing of the appeal, and a notice of hearing so given shall be deemed to comply with the requirements of that subsection.

**229. EVIDENCE TO BE RECEIVED ON HEARING.**

Evidence other than the evidence and proceedings before the Court by which the conviction, order or adjudication was made shall not be received on the hearing of an appeal, except by consent of the parties or by order of the National Court.

### 230. POWER OF NATIONAL COURT ON APPEAL.

(1) On the hearing of an appeal, the National Court shall inquire into the matter, and may—

- (a) adjourn the hearing from time to time; and
- (b) mitigate or increase a penalty or fine; and
- (c) affirm, quash or vary the conviction, order or adjudication appealed from, or substitute or make a conviction, order or adjudication which ought, on the evidence before the National Court, to have been made by a District Court; and
- (d) remit the case for hearing or for further hearing before the Court which made the conviction, order or adjudication or any other competent court; and
- (e) exercise a power that the Court that made the conviction, order or adjudication might have exercised; and
- (f) make such further or other order as to costs or otherwise as the case requires.

(2) An appeal shall be allowed only if it appears to the National Court that there has been a substantial miscarriage of justice.

### 231. DISPENSING WITH CONDITIONS PRECEDENT.

The National Court may—

- (a) dispense with compliance with a condition precedent to the right of appeal prescribed by this Act, if, in its opinion, the appellant has done whatever is reasonably practicable to comply with the provisions of this Act; and
- (b) on application made *ex parte* by the party appealing—extend the time for compliance with a condition precedent to the right of appeal prescribed by this Act.

### 232. AMENDMENT OF NOTICE OF APPEAL.

(1) Subject to Subsection (2), an appeal shall not be defeated merely by reason of a defect, whether of substance or of form, in a notice or statement of the grounds of appeal, but if on the hearing the National Court is of opinion that an objection raised to the notice or statement is valid the National Court may cause the notice or statement to be amended.

(2) If a notice or statement of grounds of appeal appears to have—

- (a) been misleading; or
- (b) occasioned expense; or
- (c) prejudiced the respondent,

an amendment shall be allowed only on such terms as to costs or postponement, or both, as the National Court thinks just.

**233. DECISION TO BE NOTIFIED TO CLERK.**

After an appeal from a conviction, order or adjudication is decided, the Registrar of the National Court shall send without delay to the Clerk of the Court from the conviction, order or adjudication of which the appeal was made, for entry in his register, a memorandum of the decision of the National Court.

**234. COSTS OF APPEAL.**

(1) Where the National Court makes an order as to the costs of an appeal, it shall direct them to be paid to the Registrar of the National Court, to be paid over by him to the party entitled to the costs, and may limit a time within which the costs are to be paid.

(2) If costs are not paid within the time limited under Subsection (1) or, if no time is so limited, within seven days after the making of the order, the Registrar, on application by the party entitled to the costs or his lawyer and on payment of the prescribed fee, shall give to the party applying a certificate that the costs have not been paid.

**235. ENFORCEMENT OF COSTS OF APPEAL.**

(1) On production to a Magistrate of a certificate under Section 234 the payment of the costs may be enforced in the same manner as an order of a Court for the payment of a sum of money, or by putting the recognizance (if any) in suit, or both.

(2) Subject to Subsection (3), where the appellant has made a deposit under Section 222 the National Court may order the money so deposited to be applied, so far as it extends, in payment of—

- (a) firstly—the costs both of the appeal and of the conviction, order or adjudication; and
- (b) secondly—the sum adjudged by the Court to be paid; and
- (c) the residue (if any) to be repaid to the appellant.

(3) Where the conviction, order or adjudication appealed against is quashed or set aside, the whole amount of the deposit referred to in Subsection (2) shall be repaid to the appellant.

**236. COURT, ETC., MAY ENFORCE DECISION ON APPEAL.**

(1) Where a conviction, order or adjudication has been affirmed, amended or made by the National Court on an appeal, a Court or Magistrate has the same authority to enforce the conviction, order or adjudication as if it had not been appealed from or had been made in the first instance.

(2) An action or proceeding shall not be commenced or had against a Court or Magistrate for enforcing a conviction, order or adjudication referred to in Subsection (1) by reason of a defect in the conviction, order or proceeding.

### 237. ARREST OF APPELLANT.

If it is made to appear on oath to a Magistrate that a person who has instituted an appeal under this Part is about to leave the country, the Magistrate may issue his warrant for the apprehension of the appellant and may commit him to prison, there to be kept until the determination of the appeal, unless he in the meantime enters into a recognizance, oral or in writing, with a surety or sureties sufficient, in the opinion of a Magistrate, to secure his appearance to abide the judgement of the National Court.

### 238. SERVICE OF NOTICE, ETC.

(1) A notice, process or document required or authorized by this Part to be served on a person may be served on that person—

- (a) by delivering it to him personally; or
- (b) by leaving it for him at his usual or last-known place of abode or business with some person, apparently an inmate of or employed at that place and apparently not less than 16 years of age.

(2) The service on a person of a notice, process or document referred to in Subsection (1) may be proved by affidavit, but the National Court may require the person who served the notice, process or document to be called as a witness, or require further evidence of the facts.

### 239. CONTROL OF NATIONAL COURT OVER SUMMARY CONVICTIONS.

(1) A person brought before the National Court or a Judge on *habeas corpus* shall not be discharged from custody by reason of a defect or error in a warrant of commitment of a Court, unless the Court or one of the Magistrates constituting the Court and the prosecutor or other party interested in supporting the warrant have received reasonable and sufficient notice of the intention to apply for the discharge.

(2) A notice under Subsection (1) shall require the Court or Magistrate to transmit or cause to be transmitted to the National Court or to the Judge, as the case may be—

- (a) the conviction or order (if any) on which the commitment was founded; and
- (b) the depositions and information or complaint (if any) intended to be relied on in support of the conviction or order,

or certified copies of them.

**240. AMENDMENT.**

If—

- (a) a conviction or order, information or complaint and depositions, or certified copies of them, are transmitted to the National Court in accordance with this Part; and
- (b) the offence charged or intended to be charged or the cause of action mentioned appears to have been established and the judgement of the Court to have been in substance warranted; and
- (c) the defects or errors appear to be defects of form only, or mistakes not affecting the substantial merits of the proceedings before the District Court,

the National Court or the Judge, as the case may be, shall allow the warrant of commitment and may allow the conviction or order to be immediately amended in all necessary particulars in accordance with the facts, and the person committed shall be remanded to his former custody.

**241. IN CASES OF *CERTIORARI*.**

Sections 239 and 240, with the necessary modifications, apply in respect of an order brought before the National Court or a Judge by writ of *certiorari*, and after amendment in any such case the order may be enforced in the proper manner and shall in all respects and for all purposes be regarded and dealt with as if it had been drawn up originally as amended.

**242. NOTICE DISPENSED WITH.**

(1) Subject to Subsection (2), the notice specified in Section 239 may be given either before or after the issue of the writ of *habeas corpus* or *certiorari*.

(2) Where at the time of applying for a writ of *habeas corpus* or *certiorari*—

- (a) copies of the conviction or order and depositions are produced; or
- (b) in cases of committal for trial or for sentence—all informations, depositions and statements have been transmitted under Section 118 to the Public Prosecutor,

the National Court or the Judge, as the case may be, may dispense with the notice.

**243. NATIONAL COURT OR JUDGE MAY ADMIT TO BAIL.**

(1) Where a person committed into custody, under a summary conviction or order is brought up by writ of *habeas corpus*, and the National Court or Judge postpones the final decision on the case, the Court or Judge may discharge the person on bail on his recognizance, oral or in writing, with or without sureties, for his appearance at such time and place, and on such conditions, as the Court or Judge appoints.

(2) If the judgement of the National Court or a Judge is against a person referred to in Subsection (1), the Court or Judge may remand him to his former custody, there to serve the rest of the term for which he was committed.

#### **244. AMENDMENT OF CONVICTIONS, ETC.**

(1) Where, on an appeal under this Part, the facts of evidence appearing by the depositions in substance support the decision of the Court, if—

- (a) the decision does not extend beyond the information; and
- (b) the facts or evidence would have justified the Court in making a necessary allegation or finding omitted in the decision or in the formal conviction or order or in a warrant issued under the adjudication,

the powers of amendment conferred by Section 240 may be exercised, and where in a conviction there is some excess which may (consistently with the merits of the case) be corrected, the conviction shall be amended accordingly and shall stand good for the remainder.

(2) All amendments under Subsection (1) are subject to such orders as to costs and otherwise as the National Court or Judge, as the case may be, thinks proper.

#### **245. WANT OF SUMMONS OR INFORMATION.**

Where the person convicted or against whom an order has been made, or a person whose goods have been condemned or directed to be sold as forfeited, was present at the hearing of the case, the conviction or order shall be sustained although there has been no information or complaint or summons or amendment of them, unless he objected at the hearing that there was no information or complaint or summons or amendment of them, as the case may be.

#### **246. DISTRIBUTION OF PENALTY.**

A conviction or order shall not be defeated for the want of a distribution, or for a wrong distribution of the penalty or forfeiture.

**PART XII. – PROTECTION OF MAGISTRATES IN THE EXECUTION OF  
THEIR OFFICE.**

**247. ACT NOT WITHIN JURISDICTION.**

(1) Subject to this Part, a person injured by an act done by a Magistrate in a matter in which by law he has no jurisdiction or in which he has exceeded his jurisdiction, or by an act done under a conviction or order made or warrant issued by a Magistrate in any such matter, may maintain an action against the Magistrate.

(2) An action referred to in Subsection (1) is not maintainable for anything done under—

- (a) a conviction or order; or
- (b) a warrant which was issued by the Magistrate to procure the appearance of the person charged, and that has been followed by a conviction or order in the same matter,

until after the conviction or order has been quashed or set aside under this Act.

(3) If a warrant referred to in Subsection (2)(b)—

- (a) has not been followed by a conviction or order; or
- (b) is a warrant on an information of an alleged indictable offence,

and if—

- (c) a summons was issued prior to the warrant being issued; and
- (d) the summons was served on the person charged personally or by leaving it for him with some person at his usual or last known place of abode; and
- (e) he did not appear in accordance with the summons,

no action is maintainable against the Magistrate for anything done under the warrant.

**248. WARRANT BY MAGISTRATE ON AN ORDER OF A COURT.**

Where a conviction or order is made by a Court and a warrant of execution or of commitment is granted on the conviction or order by a Magistrate *bona fide* and without collusion, no action is maintainable against the Magistrate who granted the warrant by reason of a defect in the conviction or order or for a want of jurisdiction in the Court that made it, but the action (if any) shall be brought against the Magistrate constituting the Court that made the conviction or order.

**249. ACTS DONE UNDER ORDER OF NATIONAL COURT.**

Where a Magistrate does an act in obedience to an order of the National Court or a Judge, no action is maintainable against him for obeying the order and doing the act required.

**250. PROCEEDING CONFIRMED ON APPEAL.**

Where a warrant of execution or of commitment is granted by a Magistrate on a conviction or order that before or after the granting of the warrant, is confirmed on appeal, no action is maintainable against the Magistrate for anything done under the warrant by reason of a defect in the conviction or order.

**251. ACTIONS IN PROHIBITED CASES.**

If an action that by this Act is declared to be not maintainable is brought against a Magistrate, a Judge, on application by the defendant and on affidavit of the facts, may set aside or stay the proceedings in the action with or without costs.

**252. LIMITATION OF ACTIONS.**

An action shall not be brought against a Magistrate for anything done by him in the execution of his office unless the action is commenced before the expiration of a period of—

- (a) six months after the act complained of was committed; or
- (b) two months after the conviction or order—
  - (i) under which the act complained of was done; or
  - (ii) that followed on the warrant under which the act was done, has been quashed or set aside,

whichever is the later.

**253. NOTICE OF ACTION.**

(1) An action referred to in Section 252 shall not be commenced until at least one month after written notice of the intended action has been—

- (a) delivered to the Magistrate; or
- (b) left for him at his usual place of abode or at his office,

by the party intending to commence the action, or by his lawyer or agent, clearly and explicitly specifying the cause of action and the court in which it is intended to bring the action.

(2) On the back of a notice under Subsection (1), there shall be endorsed the name and place of abode of the party intending to sue, and the name and place of abode or of business of the lawyer or agent, if the notice is served by a lawyer or agent.

**254. TENDER AND PAYMENT OF MONEY INTO COURT.**

(1) After notice of action has been given in accordance with Section 253 and before the action is commenced, the Magistrate to whom the notice is given may

tender to the party complaining, or to his lawyer or agent, such sum of money as he thinks fit by way of amends for the injury complained of in the notice.

(2) After the action has been commenced and at any time before issue is joined, the defendant, if he has not made a tender under Subsection (1), or in addition to any such tender, may pay into court such sum of money as he thinks fit.

(3) If the court at the trial of the action is of opinion that the plaintiff is not entitled to damages beyond the sum tendered or paid into court, judgement shall be given for the defendant and the sum of money (if any) paid into court, or so much of that sum as is sufficient to pay or satisfy the defendant's costs for that purpose, shall be paid out of court to him, and the residue (if any) paid to the plaintiff.

(4) If, where money is paid into court under this section, the plaintiff elects to accept the money in satisfaction of his damages in the action, he may apply to a Judge for an order for the payment of the money out of court to him, with or without costs, and the Judge may make the order, and the action is determined and the order is a bar to any other action for the same cause.

## **255. NO ACTION IN DISTRICT COURTS FOR JUDICIAL ACTS.**

An action shall not be brought in a District Court against a Magistrate in respect of anything done by him in the execution of his office.

## **256. MAGISTRATE ONLY LIABLE IN CASE OF MALICE, ETC.**

In an action against a Magistrate for an act done by him in the execution of his duty as such or in his capacity as such, it must be expressly alleged in the statement of claim or plaint that the act was done maliciously and without reasonable and probable cause, and if the allegations are denied and at the trial of the action the plaintiff fails to prove them, judgement shall be given for the defendant.

## **257. VERDICT FOR DEFENDANT.**

If, at the trial of an action against a Magistrate, the plaintiff—

- (a) does not prove that the action was brought within the time limited by Section 252 for that purpose; or
- (b) does not prove that notice was given in accordance with Section 253; or
- (c) does not prove the cause of action stated in the notice,

judgement shall be given for the defendant.

## **258. DAMAGES.**

Where—

- (a) the plaintiff—
  - (i) in an action against a Magistrate is entitled to recover; and
  - (ii) proves—

- (A) the levying or payment of a penalty or sum of money under a conviction or order as part of the damages which he seeks to recover; or
- (B) that he was imprisoned under the conviction or order; and
- (iii) seeks to recover damages in respect of the levying or payment or imprisonment; and

(b) it is proved that the plaintiff—

- (i) was actually guilty of the offence of which he was convicted; or
- (ii) was liable by law to pay the sum which he was ordered to pay; or
- (iii) in case of imprisonment—has undergone no greater punishment than that assigned by law for the offence of which he was convicted or for non-payment of the sum which he was ordered to pay,

he is not entitled to recover the amount of the penalty or sum levied or paid, or a sum beyond the sum of two toea as damages for the imprisonment or cost of the suit.

## **259. PROTECTION TO CLERK.**

The provisions of this Act relating to the protection of a Magistrate with respect to an act done by him as such extend and apply, with the necessary modifications, to and in respect of a similar act done by a Clerk under the powers given to or conferred on him by this Act or any other Act.

**PART XIII. – COSTS.****260. AWARD OF COSTS.**

(1) The power of a Court to award costs and the award of costs by a Court are subject to the following provisions:—

- (a) where the Court makes a conviction or order in favour of the complainant, it may award and order that the defendant shall pay to the informant or complainant such costs as it thinks just and reasonable;
- (b)<sup>65</sup> subject to Section 260A, where the Court dismisses the information or complaint, or makes an order in favour of the defendant, it may award and order that the informant or the complainant shall pay to the defendant such costs as it thinks just and reasonable;
- (c) the sums allowed for costs under Paragraph (a) or (b) shall be specified in the conviction or order or order of dismissal; and
- (d) a sum awarded or ordered to be paid, whether to a complainant or to a defendant, for costs, other than costs adjudged by a conviction to be paid by the defendant to the informant, is recoverable, without the direction of the Court making the order, by execution under Division IX.2; and
- (e) where a case is adjourned, the Court may order that the costs of and occasioned by the adjournment be paid by a party to another party; and
- (f) the costs of persons present to give evidence or produce documents, whether they have been examined or not or have or have not produced documents, unless otherwise ordered by the Court, shall be allowed to them whether or not they have been summoned, but their allowance for attendance shall not exceed the highest rate of allowance prescribed; and
- (g) the amount of costs to be paid by one party to another, whether for the attendance of persons referred to in Paragraph (f) or otherwise, shall in all cases be fixed by the Court; and
- (h) where the Court convicts a defendant and orders the payment of costs to the informant, the payment of costs shall be enforced in accordance with Section 168.

(2) Costs awarded under this section on proceedings on a complaint shall not exceed the prescribed amounts.

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<sup>65</sup> Section 260(1)(b) amended by the District Courts (Amendment) Act 1986 (No. 9 of 1986), s2.

**260A. COSTS OF SUCCESSFUL DEFENDANT IN CRIMINAL PROCEEDINGS.**

<sup>66</sup>(1) Notwithstanding the provisions of Section 260(1)(b), the Court shall, before making an order for costs against an informant, consider all relevant circumstances and, in particular, where appropriate, shall consider—

- (a) whether the prosecution acted in good faith in bringing and in continuing the proceedings; and
- (b) whether at the commencement of the proceedings the prosecution had sufficient evidence to support the conviction of the defendant; and
- (c) whether the prosecution took reasonable steps to investigate any matter that—
  - (i) came to its attention; and
  - (ii) suggested that the defendant might not be guilty; and
- (d) whether the prosecution conducted the investigation into the offence in a reasonable manner; and
- (e) whether the evidence was sufficient to support the conviction of the defendant but the information was dismissed on a technical point; and
- (f) whether the information was dismissed because the defendant established that he was not guilty; and
- (g) whether the conduct of the defendant in relation to—
  - (i) the act or omission on which the charge was based; and
  - (ii) the investigation and proceedings,

was such, that a sum should be paid towards the cost of his defence.

(2) There shall be no presumption for or against an award of costs.

(3) A defendant shall not be awarded costs under Section 260(1)(b) or under any provision in any other Act by reason only of the fact that—

- (a) he has been acquitted or discharged; or
- (b) an information charging him with an offence has been dismissed or withdrawn.

**261. NO COSTS ON DISMISSAL OF CHARGE OF INDICTABLE OFFENCE.**

This Act does not empower a Court to adjudge the payment by the complainant to the defendant of costs on an adjudication of dismissal of a charge of an indictable offence.

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<sup>66</sup> Section 260A added by the *District Courts (Amendment) Act 1986* (No. 9 of 1986), s3.

**262. COURT'S AND BAILIFF'S FEES.**

(1) The prescribed fees shall be paid in respect of matters under this Act, and those fees shall be paid in the first instance and in advance by the party in whose behalf the proceedings are taken.

(2) The fees referred to in Subsection (1) shall not be demanded, received or taken from an officer or a member of the Police Force acting in the execution of his duty.

**263. AGENTS' FEES.**

A lawyer or agent is not entitled to receive more by way of fees for the work done by him than the prescribed sums.

**264. WITNESSES' FEES AND EXPENSES.**

The costs and mileage that may be allowed for the attendance of witnesses to give evidence before a Court shall be such amounts, not exceeding the prescribed amounts, as the Court allows.

**265. COSTS IN GARNISHEE PROCEEDINGS.**

(1) The costs of an application for a garnishee order and of any proceedings arising from or incidental to the application are in the discretion of the Court.

(2) Where the garnishee pays into Court five days before the return day of the summons, all debts due, owing or accruing from him to the judgement debtor, or so much of the debts as is sufficient to satisfy the judgement debt, he is not liable for costs incurred by the judgement debtor.

**PART XIV. – SECURITIES.****266. SECURITIES TAKEN UNDER THIS ACT.**

(1) A person shall give security under this Act, whether as principal or surety—

- (a) by the deposit of money with the Clerk, or
- (b) by an oral or written acknowledgement of the undertaking or condition by which, and of the sum for which, he is bound, in such manner and form as is prescribed.

(2) Record of the security having been made may be provided by entry of the security in the register under this Act, by the proceedings of a Court or in the prescribed manner.

**267. RECOVERY OF SUM DUE FROM SURETY.**

A sum that becomes due under a security under this Act from a surety is recoverable summarily in accordance with the provisions of this Act with respect to a civil debt, on complaint by a member of the Police Force or by the Clerk of the Court directing the security to be given or by some other person authorized for the purpose by that Court.

**268. ENFORCEMENT OF SUM DUE BY PRINCIPAL.**

(1) Subject to Subsection (2), a Court may enforce payment of a sum due by a principal under a security under this Act that appears to the Court to be forfeited, as if it were a sum referred to in Section 173.

(2) Before a warrant of execution for a sum referred to in Subsection (1) is issued, notice of the forfeiture shall be served on the principal by the Court authorizing the security or by a Court to which application is made for the issue of the warrant.

**269. MONEY MAY BE RECOVERED FROM PRINCIPAL.**

A sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs, charges and expenses incurred by the surety in respect of the security, shall be deemed to be a debt due to him from the principal, and may be recovered before a Court in accordance with this Act.

**270. PAYMENT ENFORCED BY SECURITY.**

Where security is given under this Act for payment of a sum of money, the payment shall be enforced by means of the security in substitution for other means of enforcing the payment.

**271. MAGISTRATE'S CERTIFICATE EVIDENCE OF NON-COMPLIANCE WITH RECOGNIZANCE.**

Where the conditions or any of the conditions of a recognizance are not complied with, a Court or Magistrate may certify on the back of the recognizance in what respect the conditions have not been observed, and that certificate is *prima facie* evidence of that non-compliance and of the recognizance having been forfeited.

**272. ENFORCEMENT OF RECOGNIZANCE.**

(1) Subject to this Act, on proof of a breach of a condition of a recognizance or on other proof of the forfeiture of the recognizance, a Court may make an order adjudging the recognizance to be forfeited and for payment of any amount due under the recognizance.

(2) Subject to Subsection (3), an order shall not be made under Subsection (1) in the absence of a person sought to be bound by the order unless it is proved, to the satisfaction of the Court, that a summons was duly served on that person at least seven days before the return of the summons.

(3) In the case of a recognizance conditioned for the appearance of a person before a Court, the order may be made by the Court *ex parte* immediately on the non-appearance of the person.

(4) Where a recognizance entered into under this Act is conditioned for the appearance of a person before the National Court, the National Court may, on the non-appearance of the person, make an order *ex parte* adjudging the recognizance to be forfeited and for the payment of any amount due under the recognizance.

(5) An order under this section may be enforced by warrant of execution.

(6) All sums paid in respect of a recognizance declared under this section to be forfeited shall be paid to the Clerk.

**273. SUSPENSION OR MITIGATION OF FORFEITURE.**

Where application is made for an adjudication of the forfeiture of a recognizance, or where a recognizance has, under Section 272, been adjudged to be forfeited by a Court, a Court may, at any time before sale under a warrant of execution, suspend, cancel or mitigate the forfeiture, on such conditions as seem to the Court just.

## PART XV. – MISCELLANEOUS.

### **274. DUTY OF MEMBERS OF POLICE FORCE.**

All members of the Police Force shall obey the warrants, orders and directions of Magistrates granted, given or done, and shall perform their several offices and duties in respect of those offices under the pains and penalties to which a member of the Police Force is liable for neglect of duty.

### **275. DUTY OF MEMBERS OF POLICE FORCE ON ARREST.**

A member of the Police Force acting in accordance with Section 274, or any other person who arrests a person offending against law, and whom he may lawfully arrest by virtue of his office or otherwise, may lawfully take and convey the person so arrested to and before a Magistrate.

### **276. POWER TO ORDER DELIVERY OF GOODS ALLEGED TO HAVE BEEN STOLEN, ETC.**

(1) Where property alleged to have been stolen or fraudulently obtained is in the custody of a member of the Police Force, in the course of the prosecution of a person for an indictable offence in regard to the stealing or obtaining of the property, and the prosecution has terminated or the defendant cannot be found, a Magistrate may make an order for the delivery of the property to the person who appears to be the rightful owner of it.

(2) An order under Subsection (1) is not a bar to the right of a person to recover the property by action from the person to whom it is delivered under the order if the action is brought within six months after the order is made.

### **277. CONTEMPT OF COURT.**

(1) A person who—

- (a) wilfully interrupts the proceedings of a Court; or
- (b) conducts himself disrespectfully to the Court during the sittings of the Court; or
- (c) obstructs or assaults a person in attendance, or an officer of the Court, in view of the Court; or
- (d) wilfully disobeys an order made by the Court under Section 63,

may be excluded from the Court and is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) A person who, in the opinion of the Court, wilfully prevaricates in giving evidence is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(3) The Court in the presence of which an offence under this section is committed may immediately convict the person guilty of the offence, on its own view or on the oath of some credible witness.

(4) If a person convicted of an offence against Subsection (1) makes to the Court, before its rising, such apology as it considers satisfactory, the Court may remit the fine wholly or in part.

## 278. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular prescribing matters providing for and relating to—

- (a) the practice and procedure before Magistrates and in Courts; and
- (b) the permitting and regulating of the payment of money into Court in satisfaction of claims made in a complaint or set-off under this Act; and
- (c) the permitting of a payment referred to in Paragraph (b) or the tender to the complainant or his agent, before the issue of a complaint, of a sum of money as amends for the injury complained of, to be relied on as a defence, and the regulation of the conditions of the tender or payment; and
- (d) the giving of security under this Act; and
- (e) the forms to be used under this Act, including the forms of recognizances under this Act; and
- (f) the fees, costs and charges to be paid under this Act and under any other Act so far as they relate to a matter or proceeding as to which a Court or one or more Magistrates has or have jurisdiction; and
- (g) the regulating of the form of account to be rendered by Clerks of fines, fees and other sums received by them.

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